

PART III: RULES & REGULATIONS

III. RULES & REGULATIONS

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¹ Although M.G.L. c.150A primarily covers private employers, certain public authorities, including the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Turnpike Authority, Massachusetts Port Authority, Massachusetts Parking Authority, and Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority are covered by M.G.L. c.150A. See, M.G.L. c.161A; Chapter 760 of the Acts of 1962.

A. LABOR RELATIONS COMMISSION**2.00: ADMINISTRATION OF THE LABOR RELATIONS LAW: M.G.L. c. 150A**

- 2.01: Definitions
- 2.02: General Provisions
- 2.03: Conduct of Hearings
- 2.04: Questions of Representation
- 2.05: Prohibited Practices
- 2.06: Time Limit for Filing Charges
- 2.07: Designation of Agents of the Commission
- 2.08: Construction of Rules and Amendments

2.01: Definitions

Days shall mean calendar days, including Saturdays, Sundays and legal holidays.

Hearing Officers shall mean the Commission member or agent designated to preside at a hearing.

Law. The term "Law" as used herein shall mean the State Labor Relations Law (M.G.L. c. 150A).

The terms "person", "employer", "employee, representatives," "labor organizations," "unfair labor practice," and "Commission" as used herein, shall have the meanings set forth in M.G.L. c.150A, s. 2, as amended.

Party as used herein in connection with the proceedings under M.G.L. c. 150A, s. 6, shall mean the respondent to the charge, the charging party and any other persons, labor organizations, or entities whose intervention in the proceedings has been permitted by the Commission. The term "party" as used herein in connection with proceedings under M.G.L. c. 150A, s. 5, shall mean the employer, or employers, the person or organization designated in the notice of hearing and served therewith, the petitioner and any other person, labor organization, or entity whose intervention has been permitted by the Commission, except as limited by the Commission in granting such permission.

Showing of Interest shall mean the percentage, established by 456 CMR 14.05, of employees in an alleged appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive representative or have signed a petition seeking decertification of an incumbent employee organization. Such designations shall consist of authorization cards or petitions, signed and dated by employees, authorizing the named employee organization to represent such employees for the purpose of collective bargaining; current dues deductions; or evidence approved by the Commission.

2.02: General Provisions

The provisions of 456 CMR 12.00 are applicable to all proceedings under 456 CMR 2.00.

2.03: Conduct of Hearings

The provisions of 456 CMR 13.00 are applicable to all proceedings under this chapter, except that any party seeking review of a decision of a hearing officer may file an original and four copies of a supplementary statement pursuant to 456 CMR 13.15(4).

2.04: Questions of Representation

The provisions of 456 CMR 14.00, except 456 CMR 14.06(1), and 456 CMR 14.07, are applicable to all proceedings under M.G.L. c. 150A, s.s. 5 and 5A except that all references to M.G.L. c. 150E, s. 4 in 456 CMR 14.00 shall be considered references to M.G.L. c. 150A, s.s. 5 or 5A. Moreover, except for good cause shown, no petition filed under the provisions of M.G.L. c. 150A, s.s. 5 or 5A, and no petition filed pursuant to 456 CMR 14.15 seeking to alter the composition or scope of a unit during the term of an existing valid collective bargaining agreement, shall be entertained unless such petition is filed no more than 90 days and no fewer than 60 days prior to the termination date of said agreement. A petition to alter the composition or scope of an existing unit by adding or deleting job classifications which have been created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times. No collective bargaining agreement shall operate as a bar for a period of more than three years.

2.05: Prohibited Practices

The provisions of 456 CMR 15.00 (except 15.03), 456 CMR 16.06 and 456 CMR 16.08 are applicable to all proceedings under M.G.L. c. 150A, s. 6 except that all references to M.G.L. c. 150E, s. 10 shall be considered references to M.G.L. c. 150A, s.s. 4, 4A, 4B, and 4C, and all references to M.G.L. c. 150E shall be considered references to M.G.L. c. 150A.

2.06: Time Limit for Filing Charges

(1) Fifteen day limit - M.G.L. c. 150A, s. 6A charges. Any employee required to maintain union membership as a condition of employment who files a charge pursuant to M.G.L. c. 150A, s. 6A, must file such charge not more than 15 days after notice that the union has requested the employee's discharge or other adverse action for failure to maintain union membership.

(2) Six month limit - all other charges. Except for good cause shown, no charge alleging a violation of other provisions of M.G.L. c. 150A shall be entertained by the Commission based upon any prohibited practice occurring more than six months prior to the filing of the charges with the Commission.

2.07: Designation of Agents of the Commission

The provisions of 456 CMR 18.00 are applicable to all proceedings under this chapter, except that all references to M.G.L. c. 150E shall be considered references to M.G.L. c. 150A.

2.08: Construction of Rules and Amendments

456 CMR 2.00 shall be liberally construed to effectuate the purposes and provisions of M.G.L. c. 150A.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R;

10.00:ADMINISTRATION OF M.G.L. C. 150E, AN ACT PROVIDING FOR COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

10.01: Applicability of Rules

10.01: Applicability of Rules

All proceedings before the Labor Relations Commission arising under M.G.L. c. 150E shall be conducted in accordance with 456 CMR 10.00 through 20.00.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

11.00: DEFINITIONS

- 11.01: Law
- 11.02: Terms defined by Law
- 11.03: Party
- 11.04: Recognition
- 11.05: Showing of Interest
- 11.06: Days
- 11.07: Hearing Officer
- 11.08: Complaint, Charge

11.01: Law

The term "Law" as used in 456 CMR 11.00, 12.00, 13.00, 14.00, 15.00, 16.00 or 17.00 shall mean M.G.L. c. 150E.

11.02: Terms defined by Law

The terms "board", "commission", "cost items", "employee" or "public employee", "employee organization", "employer", "incremental cost items" "legislative body", "professional employee" and "strike" as used herein shall have the meaning as set forth in M.G.L. c. 150E, s. 1. The term "appropriate bargaining unit" shall mean a bargaining unit determined by the criteria set forth in M.G.L. c. 150E, s. 3 or otherwise established by law. The term "prohibited practice" as used herein shall have the meaning specified in M.G.L. c. 150E, s. 10.

11.03: Party

The term "party" as used herein shall mean any individual, employer or employee organization participating in a matter before the Commission either as a matter of right or as an intervenor under the provisions of 456 CMR 12.03.

11.04: Recognition

The term "recognition" shall mean written recognition by an employer pursuant to 456 CMR 14.06(3) of an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining.

11.05: Showing of Interest

The term "showing of interest" shall mean the percentage, established by 456 CMR 14.05, of employees in an alleged appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive

representative or have signed a petition seeking decertification of an incumbent employee organization. Such designations shall consist of:

- (1) authorization cards or petitions, authorizing the named employee organization to represent such employees for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six-months of the filing of a petition pursuant to 456 CMR 14.03.
- (2) authorization cards or petitions, stating that such employees no longer wish to be represented by the named employee organization for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six-months of the filing of a petition pursuant to 456 CMR 14.04; or
- (3) other evidence approved by the Commission.

11.06: Days

The term "days" shall mean calendar days, including Saturdays, Sundays and legal holidays.

11.07: Hearing Officer

The term "hearing officer" shall mean the Commission member or agent designated to preside at a hearing.

11.08: Complaint, Charge

The term "complaint" as used in the first sentence only of M.G.L. c. 150E, s. 11 shall hereinafter be referred to as a "charge".

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.150E, s.3

12.00:GENERAL PROVISIONS

- 12.01: Scope of Chapter
- 12.02: Service: When required
- 12.03: Intervention
- 12.04: Appearances
- 12.05: Right to Counsel
- 12.06: Postponements
- 12.07: Time: How computed
- 12.08: Contemptuous Conduct
- 12.09: Other Conferences
- 12.10: Settlement of Cases
- 12.11: Filing with the Commission

12.01:Scope of Chapter

The provisions of 456 CMR 12.00 are applicable to all proceedings before the Commission.

12.02:Service: When required

Except as otherwise provided in 456 CMR, all petitions and charges, every pleading subsequent to the original petition or charge, every written motion, every written notice, notice of change of attorney, appearance, demand, brief or memorandum of law, request for reconsideration, notice of appeal, supplementary statement and similar paper filed with the Commission shall be signed by the party or a representative of the party on whose behalf such paper is filed and shall be served upon each of the parties or their legal representative, if any. A certificate of service or other indication of service shall accompany such filing. Service upon each of the parties, or their legal representative, if any, shall be made at the same time as such document is filed with the Commission.

12.03:Intervention

Any employer, employee or employee organization desiring to intervene in any proceeding shall file with the Commission a motion in writing, or may move orally at the hearing, on the record, stating the grounds upon which such employee, employer or employee organization claims to be interested. Such written motion must be filed at or prior to the first day of hearing in any proceeding, except for good cause shown. The Commission shall rule upon all such motions but may defer ruling until the conclusion of the hearing. The Commission may permit intervention to such extent and upon such terms as it shall deem just.

12.04:Appearances

(1) Every representative or attorney representing a party shall enter an appearance with the Commission. Every party shall designate one representative or attorney for the purpose of receiving notice, pleadings or service of process.

(2) An appearance may be withdrawn only with the permission of the Commission. A request to the Commission to withdraw an appearance shall be made in writing, served upon both the party on whose behalf the representative or attorney has appeared and upon representatives of all other parties to the proceeding.

(3) The filing of an appearance shall not operate as a waiver to any challenge to the Commission's jurisdiction.

12.05: Right to Counsel

Any party to a proceeding shall have the right to appear at any conference, investigation or hearing, by counsel or by other representative.

12.06: Postponements

Requests for postponements of hearings, investigations or conferences scheduled by the Commission will not be granted unless good and sufficient cause is shown and the following requirements are met:

(1) The request must be in writing directed to the Executive Secretary, who may refer the request to the hearing officer assigned to the proceeding.

(2) The grounds for the request must be set forth in detail.

(3) The requesting party must specify alternate dates for rescheduling the hearing or conference.

(4) The position of all parties concerning both the postponement request and the proposed alternate dates must be ascertained in advance by the requesting party and set forth in the request.

(5) Copies of the request must be served contemporaneously on all parties and that fact must be noted on the request.

(6) The request must be signed by the person making it.

(7) For the purpose of 456 CMR 12.06, "good and sufficient cause" may include a showing to the satisfaction of the Commission or its agents that a postponement will result in settlement of the case.

(8) Except for good cause shown, no request for postponement will be granted on any of the three days immediately preceding the date of hearing, investigation or conference.

12.07: Time: How computed

(1) In computing any period of time prescribed or allowed by 456 CMR 12.00, the day of the act, event or default when the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday including Suffolk County legal holidays.

(2) Whenever a party has the right or is required to do some act within a prescribed period of time, if the Commission serves notice of such right or requirement by mail, the Commission shall presume that the party received notice thereof three days from the date of issuance of such notice. The presumption may be rebutted by evidence of later receipt.

12.08:Contemptuous Conduct

(1) Contemptuous conduct by any person at any hearing, conference or other proceeding before the Commission, a member or duly designated agent shall be grounds for exclusion from any hearing, conference or other proceeding held under 456 CMR 12.00. The refusal of a witness at a hearing to answer any question which has been ruled by the Commission, member or duly designated agent to be proper shall, in the discretion of the Commission, member or duly designated agent, be grounds for striking all testimony previously given by such witness on related matters.

(2) Contemptuous conduct by an attorney or representative appearing before the Commission or its designated agent may be grounds for immediate exclusion from the hearing, conference or other proceeding at which he or she is appearing, or may be grounds for suspension or debarment from practice before the Commission. Suspension or debarment determination, and the length thereof, shall be made by the Commission after due notice and a hearing, if requested in writing.

12.09:Other Conferences

Nothing under 456 CMR 12.00 shall be construed so as to prohibit or limit the Commission or any member or agent thereof from holding a conference or investigation at any time in connection with any matter pending before the Commission.

12.10:Settlement of Cases

The Commission or its agents may suggest settlement ideas to the parties at any time and may require the parties to participate in settlement conferences.

12.11:Filing with the Commission

(1) All pleadings, written motions, briefs or memoranda filed by any party in connection with any matter pending before the Commission shall be on paper measuring 8 1/2 inches in width and 11 inches in length.

(2) All pleadings, written motions, briefs and memoranda shall be typewritten and double spaced.

(3) An original and two copies of all pleadings, written motions, briefs or memoranda shall be filed with the Commission.

(4) All documents, including those permitted to be filed by facsimile transmission, shall be deemed filed upon receipt by the Commission. Any documents, including those permitted

to be filed by facsimile transmission, received after 5:00 P.M. shall be deemed to be filed on the following business day.

(5) The Commission will permit the following documents to be filed by facsimile transmission:

- (a) Requests for extensions of time for filing documents;
- (b) Requests for continuances;
- (c) Consent election agreements;
- (d) Settlement agreements;
- (e) Withdrawal notices.

Except for those documents listed above, the Commission will not accept any document requiring an original signature by facsimile. Those include, but are not limited to: prohibited labor practice charges, written investigation submissions, representation petitions, showings of interest, answers, requests for reconsideration, requests for review, notices of appeal, objections to elections, challenges to recommended findings of fact, requests for advisory opinions, strike investigation petitions, requests for binding arbitration, filings pursuant to M.G.L. c.150E, §§13 and 14, motions, briefs, and supplementary statements.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.150E, s.3

13.00: CONDUCT OF HEARINGS

- 13.01: Scope of Chapter
- 13.02: Hearings and Recommended Findings
- 13.03: Interlocutory Appeals
- 13.04: Right to Counsel and to Offer Evidence
- 13.05: Open to Public
- 13.06: Authority of Commission Agent Presiding at Hearing
- 13.07: Motions
- 13.08: Objections
- 13.09: Witnesses
- 13.10: Stipulations of Fact
- 13.11: Record of Hearing
- 13.12: Subpoenas
- 13.13: Oral Argument or Briefs
- 13.14: Reopening of Hearings
- 13.15: Appeal of Expedited Hearing Officer Decisions

13.01: Scope of Chapter

The provisions of 456 CMR 13.00 are applicable to all hearings before the Commission, except hearings on petitions filed pursuant to 456 CMR 14.00. Hearings on petitions filed pursuant to 456 CMR 14.00 shall be governed by the procedures in 456 CMR 14.08.

13.02: Hearings and Recommended Findings

(1) The Commission in its discretion may designate that the allegations set forth in a complaint shall be decided by the Commission in the first instance, or by a hearing officer, and shall notify the parties of such designation or redesignation.

(2) A hearing that has been designated for a Commission decision in the first instance shall be presided over by a Commission member or by a hearing officer. The Commission shall decide the case in a written decision based on the record of the proceedings. The Commission may direct the hearing officer or Commission member who has observed the witnesses to issue written recommended findings of facts and/or recommended conclusions of law prior to the Commission's consideration of the case. Within ten days after notice thereof, or within 15 days of receipt of a copy of the taped recording or stenographic transcription of the hearing if a timely request for same has been made after receipt of a hearing officer's or Commission member's recommended factual findings and/or conclusions of law, whichever is later, any party may submit to the Commission an original and four copies of a written challenge of the hearing officer's or Commission member's recommended findings of fact and/or conclusions of law. Challenges to a hearing officer's or Commission member's recommended factual findings must identify the specific recommended findings alleged to be erroneous and must clearly identify all record evidence that supports a contrary factual finding. Challenges to a hearing officer's or Commission member's recommended conclusions of law must identify the specific

recommended conclusions challenged and must explain the basis for the challenging party's challenge. Within ten days of receipt of the challenging party's challenge, any other party to the proceeding may submit an original and four copies of a written response to the challenge. The record of the proceedings will include the hearing officer's or Commission member's recommended factual findings and/or conclusions of law along with any written challenges and responses submitted to the Commission. The authority exercised by the hearing officer or Commission member shall be as set forth in 456 CMR 13.06.

(3) A hearing that has been designated for a hearing officer decision in the first instance shall be presided over by a hearing officer who shall have, in addition to the authority set forth in 456 CMR 13.06, the authority to make all rulings and orders necessary to decide the case based on the record of the proceedings. Final decisions and orders of the hearing officer shall be in writing and may be appealed to the Commission in accordance with 456 CMR 13.15.

13.03: Interlocutory Appeals

(1) Prior to the close of a hearing, a party may seek relief from a ruling or order of the hearing officer in the following manner:

- (a) the motion for relief must be in writing and addressed to the Executive Secretary;
- (b) the motion must set forth with specificity the ruling or order from which relief is sought and grounds on which the party believes that it is entitled to relief, including why review following the close of the hearing is not an adequate remedy.

(2) Such a motion for review shall not operate to delay or interrupt the hearing. The ruling of the hearing officer shall remain in effect until and unless modified or overruled by the Commission. The Commission may, at its discretion, defer any ruling on such motion until the close of the hearing.

13.04: Right to Counsel and to Offer Evidence

Any party to a proceeding shall have the right to appear at such proceeding in person, by counsel or by other representative, to call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence.

13.05: Open to Public

Any hearing conducted pursuant to this chapter shall be open to the public except in extraordinary situations or circumstances as the Commission, in its discretion, may determine.

13.06: Authority of Commission Agent Presiding at Hearing

The Commission, member or hearing officer presiding at a hearing shall have the right to inquire fully into the facts relevant to the subject matter of the hearing and shall not be

bound by the rules of evidence observed by courts. The Commission, member or hearing officer shall have the authority:

- (1) to administer oaths and affirmations;
- (2) to issue subpoenas;
- (3) to rule upon motions to revoke or modify subpoenas;
- (4) to rule upon offers of proof and receive relevant evidence;
- (5) to permit depositions to be taken when appropriate;
- (6) to limit the examination and cross-examination of each witness to one representative for each party;
- (7) to hold conferences for the settlement or clarification of the issues;
- (8) to dispose of procedural requests or similar matters;
- (9) to require the parties to identify prospective witnesses at least ten days prior to a scheduled hearing whenever possible and to call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;
- (10) to request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof or to request the parties to submit proposed findings of fact, conclusions of law and/or requests for remedial relief;
- (11) to continue the hearing from day to day or to adjourn the hearing to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;
- (12) to rule on the admissibility of evidence; and
- (13) to take any other action authorized by 456 CMR 13.00.

13.07: Motions

All motions made prior to or subsequent to the hearing shall be filed in writing with the Commission in accordance with the provisions of 456 CMR 12.11 and shall state the order or relief applied for and the grounds for the motion. Within seven days of service of the motion, any other party to the proceeding may file a response with the Commission, unless directed otherwise by the Commission or its agent. The Commission or hearing officer may defer ruling on any motions until the close of the hearing and may direct the parties to proceed with the hearing while the motion is pending. All motions made at the hearing shall be stated orally, unless otherwise directed by the Commission or the hearing officer, and shall be included in the record of the hearing.

13.08: Objections

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a short statement of the

grounds of such objection, and shall be included in the record of the hearing. No such objection shall be deemed waived by further participation in the proceedings.

13.09: Witnesses

Witnesses shall be examined orally under oath or affirmation, except if they reside outside of the State or because of illness or other cause are unable to testify before the Commission. In such situations, the Commission or its agent may direct that the testimony be taken within or without this State in such manner and in such form as is permitted by law.

13.10: Stipulations of Fact

In any proceeding, stipulations of fact may be introduced in evidence with respect to any issue.

13.11: Record of Hearing

(1) Except for good cause shown, all hearings conducted pursuant to 456 CMR 13.00 shall be recorded by one of the following methods: audio tape, stenographic transcription, handwritten transcription, or other equivalent method approved by the Commission.

(2) Copies of any official audio tape, stenographic transcription, handwritten transcription or other equivalent record prepared by the Commission or its agents shall be made available to all parties for purchase and may be made available for the parties to review at the Commission's offices.

(3) Any party desiring a copy of the above-referenced record of the hearing before the Commission may submit a written request for same to the Executive Secretary of the Commission.

(4) Any party may request permission of the hearing officer, or if one has not yet been designated, of the Commission, to record the hearing by means of audio tape or stenographic transcription, or through other means that will not disrupt the proceedings. Any party may request the Commission to designate a written transcript of the proceeding as the official record of the proceeding subject to the following requirements:

(a) A copy of the written transcript has been made available to all other parties to the proceeding and all have had the opportunity to specify any objections to the accuracy of the transcript to the Commission;

(b) A copy of the written transcript will be made available for purchase to all other parties for a reasonable fee reflective of the cost of the transcript;

(c) A copy of the written transcript is provided without charge to the Commission with the understanding that the Commission will make the transcript available to the public pursuant to the provisions of state law.

The Commission may refer such a request to the hearing officer for resolution.

13.12: Subpoenas

(1) Any party to a proceeding under this chapter may request the issuance of a subpoena to compel the attendance of witnesses or the production of books, records, documents or correspondence.

(2) The party requesting a subpoena shall submit a written request to the hearing officer assigned to the proceeding or, if no hearing officer has been assigned, to the Executive Secretary. The request shall be submitted on a form authorized by the Commission and shall include:

- (a) the Commission case number and caption of the proceeding;
- (b) the name, address and telephone number of the party requesting the subpoena;
- (c) the date, time and location of the proceeding;
- (d) the name and address of the witness whose testimony is sought; and,
- (e) a specific description of the books, records, correspondence or documents sought.

(3) The hearing officer, the Executive Secretary, or a Commission member shall be authorized to grant or deny requests for subpoenas and shall be authorized to affix the seal of the Commission. A request for issuance of a subpoena shall be denied only if such request fails to comply with 456 CMR 13.12(2) or if the request is overbroad, oppressive or otherwise legally defective.

(4) The party requesting the subpoena shall be responsible for service of the subpoena and shall assume all costs of service, witness fees and mileage. Subpoenas shall be served in person by a disinterested person or by certified or registered mail. Witnesses shall be paid the same fees for attendance and travel as in civil cases in the courts of the Commonwealth and such fees shall be paid at the time of service.

(5)(a) At or prior to the time at which the subpoena compels attendance, but not later than five days after service of the subpoena, any witness under subpoena may file a motion for revocation or modification of any subpoena by submitting a written motion to the hearing officer, or, if no hearing officer has been designated, to the Executive Secretary. The motion shall include a statement of the grounds for revocation or modification of the subpoena.

(b) Upon receipt of a motion for revocation or modification of a subpoena, the hearing officer or the Commission shall rule upon the motion. Prior to such ruling, an investigation, pursuant to the provisions of M.G.L. c. 30A, s. 12(4) as amended, shall be conducted.

The Commission may defer ruling on the motion pending designation of a hearing officer.

(6) In the event of failure of a witness to comply with a subpoena, the Commission may initiate proceedings in Superior Court to compel compliance, or may decline to initiate such proceedings. If the Commission declines both to quash the subpoena and to initiate proceedings in court nothing in these regulations will prohibit the party at whose request the subpoena was issued from seeking enforcement of the subpoena in court pursuant to M.G.L. c. 30A, s. 12(5).

13.13: Oral Argument or Briefs

- (1) The parties shall be entitled to oral arguments at the close of the hearing or may be given permission by the hearing officer or the Commission to file briefs or written statements. The time for oral argument shall be fixed by the Commission or hearing officer.
- (2) Any party permitted to file a brief shall submit the original and four copies within ten days after the close of the hearing, unless otherwise directed by the hearing officer or Commission.
- (3) Requests for additional time in which to file a brief shall be made in writing to the hearing officer in a hearing pursuant to 456 CMR 13.02(3) and to the Executive Secretary in a hearing pursuant to 456 CMR 13.02(2), and shall be filed with same no later than three days before the date such briefs are due.
- (4) No reply briefs may be filed except by permission either of the hearing officer in a hearing pursuant to 456 CMR 13.02(3) or of the Commission in a hearing pursuant to 456 CMR 13.02(2).

13.14: Reopening of Hearings

The Commission or hearing officer may reopen the hearing and receive further evidence or otherwise dispose of the matter prior to the issuance of a final decision. The Commission or hearing officer shall notify the parties of the time and place of hearings reopened under this section.

13.15: Appeal of Hearing Officer Decisions Pursuant to 456 CMR 13.02(3)

- (1) The decision of the hearing officer in a hearing designated for a hearing officer's decision pursuant to 456 CMR 13.02(3) shall become final and binding on the parties unless, within ten days after notice thereof, any party requests a review by the Commission. This procedure is the exclusive method by which the parties may request review by the Commission of the decision of the hearing officer.
- (2) The decision of a hearing officer shall include the findings of fact and conclusions of law upon which the hearing officer based the decision.
- (3) Any party seeking review of a decision of a hearing officer must file a notice of appeal with the Executive Secretary not later than ten days after notice of the decision of the hearing officer. The notice of appeal shall be in writing and contain the case name and number, the date of the decision of the hearing officer and a statement that the party requests review by the Commission.
- (4) Within ten days after notice of the hearing officer's decision, or within 15 days after receipt of a copy of the taped recording or stenographic transcription of the hearing if a timely request for same has been made pursuant to 456 CMR 13.15(7), whichever is later, any party appealing to the Commission shall file an original and four copies of a supplementary statement. Within ten days of service thereof, any other party to the

proceeding may file an original and four copies of a supplementary statement responding to matters raised by the appealing party.

(5) Supplementary statements shall state with specificity the basis of the appeal. A party claiming that the hearing officer has made erroneous findings of fact shall identify the specific findings challenged and clearly identify all record evidence supporting the party's proposed findings of fact. The findings of fact made by the hearing officer may be adopted summarily by the Commission unless specifically objected to by a timely filed supplementary statement. Only disputes as to material issues of fact need be resolved by the Commission on appeal. When a party claims that the hearing officer has made errors of law, the supplementary statement shall identify the challenged conclusions and must explain the basis upon which the party believes the conclusions to be erroneous. Failure to provide the above-described information may result in summary dismissal of the appeal.

(6) The record on review before the Commission shall consist of the hearing officer's decision, the supplementary statements of the parties, if any, such portions of the record before the hearing officer as are necessary to resolve factual disputes and such other evidence as the Commission may require.

(7) The parties may request a copy of the taped recording or stenographic transcription of the hearing following the close of the hearing. If the hearing has been recorded by audio tape, a request for a copy of the audio tape shall be made to the Executive Secretary together with payment. A request for a copy of either the audio tape or stenographic transcription filed more than ten days after notice of the hearing officer's decision will not extend the period for filing a supplementary statement. A request for a copy of the audio tape or stenographic transcription filed within ten days after notice of the hearing officer's decision shall stay the time for filing supplementary statements until 15 days after a copy of the audio tape or stenographic transcription has been made available to the party so requesting.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.150E, s.3

14.00: QUESTIONS OF REPRESENTATION

- 14.01: Petitions
- 14.02: Petitions by Employers
- 14.03: Petitions by Employee Organizations
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- 14.16: Revocation of Certification
- 14.17: Deferral to AFL-CIO "No Raiding" Procedure
- 14.18: Intervention

14.01: Petitions

- (1) All petitions filed under 456 CMR 14.00 shall be in the form prescribed by the Commission.
- (2) All petitions filed under 456 CMR 14.00 shall be in writing and shall contain a declaration by the person signing them, under the penalties of perjury, that the contents are true and correct to the best of the signer's knowledge or belief.

14.02: Petitions by Employers

- (1) In initiating action under M.G.L. c. 150E, s. 4, a petition filed by an employer alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit shall contain the following information:
 - (a) The correct name and address of the employer and its designated representative for purposes of collective bargaining.
 - (b) A full description of the bargaining unit involved, specifying the job classifications of the employees of the petitioning employer included therein or excluded therefrom, and the approximate number of employees therein.
 - (c) The name, address and affiliation of the exclusive representative, if any.
 - (d) The date of recognition or certification, if any.
 - (e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.02(1)(b).

(f) The names and addresses of all employee organizations known to have claimed recognition as representatives of a substantial number of employees described in 456 CMR 14.02(1)(b), giving the date of each claim.

(g) The names and addresses of other employee organizations known to the employer to have an interest in representing the employees described in 456 CMR 14.02(1)(b).

(h) Any other relevant facts which may be required in a petition form issued by the Commission.

(2) A petition filed by an employer seeking clarification or amendment of an existing bargaining unit shall contain the following information:

(a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses.

(b) A complete description of the bargaining unit and, if the bargaining unit is certified, an identification of the case number(s) in which the existing certification was issued and amended.

(c) A full description of the job classifications sought to be included or excluded by the proposed clarification.

(d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.02(2)(b) and (2)(c).

(e) The name and address of any other employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee.

(f) The number of employees in the present bargaining unit and the unit proposed by the clarification.

(g) A statement by petitioner setting forth reasons why petitioner seeks clarification of the unit.

(h) Any other relevant facts which may be required by the Commission.

(3) All petitions filed pursuant to this section must be served on all incumbent labor organizations or their legal counsel, if any.

14.03: Petitions by Employee Organizations

(1) In initiating action under M.G.L. c. 150E, s. 4, a petition filed by an employee organization alleging that a substantial number of employees wish to be represented by it shall contain the following information:

(a) The correct name, address and affiliation of the employee organization.

(b) The correct name and address of the employer and the name and address of its representative designated for the purpose of collective bargaining.

- (c) A full description of the bargaining unit claimed to be appropriate, including job titles, and the approximate number of employees therein.
 - (d) The name and address of all employee organizations known to represent or known to claim to represent any of the employees in the bargaining unit claimed to be appropriate.
 - (e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.03(1)(c).
 - (f) Any other relevant facts which may be required in a petition form issued by the Commission.
- (2) A petition filed by an employee organization seeking clarification or amendment of an existing bargaining unit shall contain the following information:
- (a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses.
 - (b) A complete description of the bargaining unit and, if the bargaining unit is certified, an identification of the case number(s) in which the existing certification was issued and amended.
 - (c) A full description of the job classifications sought to be included or excluded by the proposed clarification.
 - (d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.03(2)(b) and (2)(c).
 - (e) The name and address if any employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee.
 - (f) The number of employees in the present bargaining unit and the unit proposed by the clarification.
 - (g) A statement by the petitioner setting forth reasons why petitioner seeks clarification of the unit.
 - (h) Any other relevant facts which may be required by the Commission.
- (3) All petitions filed pursuant to this section must be served on all incumbent labor organizations or their legal counsel, if any.

14.04: Petitions by Employees

- (1) In initiating action under M.G.L. c. 150E, s. 4, a petition filed by or on behalf of a substantial number of employees in a unit alleging that the exclusive representative no longer represents a majority of the employees in the unit shall contain the following information:
- (a) The correct name and address of the petitioner.
 - (b) The correct name and address of the employer and the name and address of its collective bargaining representative, if known.

- (c) A full description of the bargaining unit involved, and the approximate number of employees in the unit.
 - (d) The name, address and affiliation of the recognized or certified representative.
 - (e) The date of recognition or certification.
 - (f) The expiration date of the current collective bargaining agreement covering the employees described in 456 CMR 14.04(1)(c), if any.
 - (g) A concise statement setting forth the facts which cause the petitioner to believe that the exclusive representative no longer represents a majority of the employees in the unit.
 - (h) Any other relevant facts which may be required in a petition form issued by the Commission.
- (2) Individual employees may not file petitions for clarification or amendment of certification.
- (3) All petitions filed pursuant to this section must be served on all incumbent labor organizations or their legal counsel, if any.

14.05: Showing of Interest

- (1) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees who are not currently represented for purposes of collective bargaining shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the petitioner has been designated by at least 30% of the employees involved to act in their interest.
- (2) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees already represented for purposes of collective bargaining and not petition filed pursuant to 456 CMR 14.04 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the petitioner has been designated by at least fifty percent (50%) of the employees involved to act in their interest.
- (3) No motion to intervene filed under 456 CMR 14.18 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the intervenor has been designated by at least 10% of the employees involved to act in their interest, provided that any incumbent exclusive representative who files a motion to intervene need not comply with the requirement under this section. Authorization cards or other written evidence of a "showing of interest" (as defined in 456 CMR 11.05) must be submitted by the petitioner with the petition or by the intervenor with the motion to intervene to enable the Commission to make this determination. The Commission may require the employer to submit a payroll or personnel list to assist in determining whether a sufficient showing of interest has been made. If a payroll or personnel list is requested by the Commission but is not made available, the showing of interest as submitted shall, if otherwise valid, be accepted as bona fide. If the Commission finds that a sufficient showing of interest has not been made, the petitioner or intervenor shall be given notice by the Commission of that finding and shall be allowed seven days after receipt of written notice of

that finding to submit a further showing of interest. This seven-day period shall not extend the times for filing a representation petition set out in 456 CMR 14.06. If sufficient showing of interest is not timely submitted by the petitioner the Commission may dismiss the petition. If sufficient show of interest is not timely submitted by an intervenor the Commission may deny the intervenor either the opportunity to participate in or to challenge a consent election agreement between other parties, and/or the opportunity to appear on an election ballot.

14.06: Bars to Petitions; Elections

(1) Contract Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, s. 4, shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement. No collective bargaining agreement shall operate as a bar for a period of more than three years.

(b) Except for good cause shown, no petition seeking clarification or amendment of an existing bargaining unit shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement, provided that a petition to alter the composition or scope of an existing unit by adding or deleting job classifications created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times.

(2) Withdrawal/Disclaimer Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, s. 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner withdrew from a prior petition within the preceding 6 months.

(b) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, s. 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner disclaimed interest in continued representation of the bargaining unit within the preceding six months.

(3) Election Year Bar. Except for good cause shown, no election shall be directed by the Commission pursuant to M.G.L. c. 150E, s. 4, in any bargaining unit or subdivision thereof within which a valid election has been held in the preceding 12 months.

(4) Certification Year Bar. Except for good cause shown, the Commission will not process a petition for an election in any bargaining unit or subdivision thereof represented by a certified bargaining representative when the Commission has issued a certification of representative within the preceding 12 months.

(5) Recognition Year Bar. Except for good cause shown, no petition for an election will be processed by the Commission pursuant to M.G.L. c. 150E, s. 4, in any represented bargaining unit or any subdivision thereof with respect to which a recognition agreement has been executed in accordance with the provisions of this subsection in the preceding 12-month period. For the purpose of 456 CMR 14.06, recognition shall not be extended to an employee organization unless:

(a) The employer in good faith believes that the employee organization has been designated as the freely chosen representative of a majority of the employees in an appropriate bargaining unit;

(b) The employer has conspicuously posted a notice on bulletin boards where notices to employees are normally posted for a period of at least 20 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization in a specified bargaining unit;

(c) The employer shall not extend recognition to an employee organization if another employee organization has within the 20 day period notified the employer of a claim to represent any of the employees involved in said bargaining unit and has prior to or within such period filed a valid petition for certification which is pending before the Commission; and,

(d) Such recognition shall be in writing and shall describe specifically the bargaining unit involved.

(e) The employee organization is in compliance with the applicable filing requirements set forth in M.G.L. c. 150E, §§13 and 14.

14.07: Employees of the Commonwealth

(1) With respect to employees of the Commonwealth, excepting only employees of community and state colleges and universities, no petition filed under the provisions of M.G.L. c. 150E, s. 4, shall be entertained, except in extraordinary circumstances where the petition seeks certification in a bargaining unit not in substantial accordance with the provisions of this section. Bargaining units shall be established on a state wide basis, with one unit for each of the following occupational groups, excluding in each case all managerial and confidential employees as so defined in M.G.L. c. 150E, s. 1.

NONPROFESSIONAL EMPLOYEES:

UNIT 1. Administrative and Clerical, including all nonprofessional employees whose work involves the keeping or examination of records and accounts or general office work;

UNIT 2: Service, Maintenance and Institutional, excluding building trades and crafts and institutional security;

UNIT 3: Building Trades and Crafts;

UNIT 4: Institutional Security, including correctional officers and other employees whose primary function is the protection of the property of the employer, protection of persons on

the employer's premises and enforcement of rules and regulations of the employer against other employees; and,

UNIT 5: Law Enforcement, including all employees with power to arrest, whose work involves primarily the enforcement of statutes, ordinances, and regulations, and the preservation of public order.

PROFESSIONAL EMPLOYEES, as defined in M.G.L. c. 150E, s. 1:

UNIT 6: Administrative, including legal, fiscal, research, statistical, analytical and staff services;

UNIT 7: Health Care;

UNIT 8: Social and Rehabilitative;

UNIT 9: Engineering and Science; and,

UNIT 10: Education.

(2) Notwithstanding any provision of this section, nothing shall prevent the Commission from finding appropriate:

(a) the inclusion of related technical employees in any of the professional units designated 6 through 10, provided that the requirements of M.G.L. c. 150E, s. 3. have been met;

(b) one or more units of supervisory employees;

(c) separate units for employees of constitutional officers;

(d) separate units for employees of the judiciary;

(e) separate units for employees of the General Court; and,

(f) other units for employees of the Commonwealth specifically established by law.

14.08: Investigation and Hearing

(1) The Commission or a designated agent shall investigate a petition filed under M.G.L. c.150E, s. 4 to determine if there is reasonable cause to believe that a question of representation exists. The Commission or its agent may require any party to state in writing its position on any issue raised by the petition or to provide the Commission with position descriptions, affidavits, or other information the Commission believes to be relevant to the issues raised by the petition. If the Commission, upon investigation, has reasonable cause to believe that a substantial question of representation exists, it shall provide for an appropriate hearing upon due notice and in connection therewith shall prepare and cause to be served upon the employer involved, upon any parties or upon employee organizations purporting to act as representative of any employees directly affected by the filing of a petition under 456 CMR 14.00, whether named in the petition or not, a notice of hearing upon the question of representation before the Commission at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

(2) The Commission or a designated agent shall investigate a petition seeking clarification or amendment of an existing bargaining unit to determine if there is a sufficient dispute of

relevant facts to warrant a hearing. The Commission or its agent may require any party to state in writing its position on any issue raised by the petition. If the Commission, upon investigation, has reasonable cause to believe there is a sufficient dispute of relevant facts, it shall provide for an appropriate hearing upon due notice and in connection therewith shall prepare and cause to be served upon the employer involved, upon any parties or upon employee organizations purporting to act as representative of any employees directly affected by the filing of a petition under this chapter, whether named in the petition or not, a notice of hearing upon the issued raised in the petition before the Commission at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

(3) For the purpose of informing employees affected by the filing of a petition under 456 CMR 14.00, the posting of notices or orders of the Commission on the premises of an employer in a place readily accessible to the employees shall constitute due notice to such employees. Copies of the petition and the notice of hearing shall be so posted by the employer.

(4) Hearings conducted under 456 CMR 14.08 may be conducted by the Commission or a hearing officer or other agent designated by the Commission. The procedures specified in 456 CMR 13.03, 13.07, 13.08, 13.09, 13.10, 13.12, and 13.14 and the following procedures shall apply to all hearings conducted under 456 CMR 14.08:

(a) Subject to 456 CMR 14.08(4)(c), any party to the proceeding shall have the right to appear in person, by counsel or by other representative, to call, examine, and cross-examine witnesses and to offer documentary or other evidence in to the record;

(b) Any hearing conducted under 456 CMR 14.08 shall be open to the public, except in extraordinary cases as the Commission, in its discretion, may determine.

(c) The Commission, hearing officer, or other designated agent shall have the right to inquire fully into the facts relevant to the issues raised by the petition and shall not be bound by the rules of evidence observed by the courts. The Commission or hearing officer shall have the authority to:

1. To administer oaths and affirmations;
2. To issue subpoenas;
3. To rule on motions to revoke or modify subpoenas;
4. To limit examination and cross-examination of each witness to one representative per party;
5. To hold conferences for the settlement or clarification of the issues;
6. To dispose of procedural motions or similar matters;
7. To require the parties to identify prospective witnesses at least ten days prior to a scheduled hearing;
8. To call, question and cross-examine witnesses; introduce or require the parties to produce relevant documentary evidence; solicit stipulations from the parties; take

administrative notice of evidence in related proceedings before the Commission; and to exclude cumulative evidence;

9. To require the parties to submit pre-filed direct testimony;

10. To continue the hearing from day to day or otherwise continue the hearing consistent with any applicable case processing time guidelines.

(d) The parties shall be permitted to make oral arguments at the close of the hearing or may be permitted by the Commission, hearing officer, or agent to file written briefs within ten days after the close of the hearing. Requests for additional time to file briefs will be granted only in extraordinary circumstances or to permit parties an opportunity to obtain tapes of the hearing, provided that the time period for filing briefs, including any extensions that may be permitted shall not exceed 21 days.

14.09: Record

The record in a hearing conducted under this section shall consist of the petition, notice of hearing, with return of service thereon, if available, appearance cards, motions, rulings, orders, taped recording or stenographic transcription, stipulations, exhibits, documentary evidence, depositions and amendments to any of the foregoing.

14.10: Disposition of Petitions

The Commission or designated hearing officer shall proceed, within a reasonable time after the introduction of evidence, or after oral argument or the submission of briefs, or further hearing, as it may determine, to dismiss the petition, or to direct an election by secret ballot among the employees in a bargaining unit determined by it to be appropriate, or to make other disposition of the matter.

14.11: Consent Election Agreements

Where a petition has been duly filed, the employer, employee organization or person or persons representing a substantial number of employees involved and any intervenor which has submitted the required show of interest may, subject to the approval of the Commission, enter into a stipulation for the waiving of hearing and the conducting of a consent election. Such stipulation shall include a description of the appropriate unit, the time and place for holding the election and the payroll or the personnel list to be used in determining which employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the supervision of the Commission or its agents.

14.12: Elections

When the Commission determines that an election by secret ballot shall be conducted or when it approves an agreement for a consent election it shall direct that such election be conducted upon such terms as it may specify, including an election conducted by mail, an election conducted in person, or any other means ordered by the Commission.

(1) Unless otherwise directed by the Commission, all elections shall be by secret ballot, provided, however, that no employee organization shall appear on the ballot unless the employee organization is in compliance with M.G.L. c. 150E, s.s. 13 and 14 pursuant to the provisions of 456 CMR 16.05. Whenever two or more employee organizations are included as choices in an election, a participant may, upon its request, have its name removed from the ballot; provided, however, that such employee organization gives timely notice in writing to all parties and to the Commission disclaiming any representational interest among the employees in the unit and provided that the ballots have not been printed, or Commission notices of the election posted, prior to the Commission's receipt of the employee organization's written request to remove its name from the ballot.

(2) Any party may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded by the Commission. If the number of challenged ballots is sufficient to determine the outcome of the election, then within seven days after the tally of ballots has been furnished each party must file with the Commission a short statement of its position concerning the eligibility of each challenged voter. Such statement shall include a recitation of the facts, if any, alleged by the party to be determinative of the challenged voter's eligibility. The Commission may require the parties to submit further evidence or argument, in order to determine whether a hearing is warranted.

(3) At the conclusion of the election, the Commission shall furnish to the parties a tally of ballots. Within seven days after the tally of the ballots has been furnished, any party may file with the Commission an original and four copies of objections to the conduct of the election or to conduct affecting the result of the election. Such filing shall specify with particularity the conduct alleged to be objectionable (including the identity of persons involved, and the date, place, time and nature of the conduct). Failure to timely specify conduct alleged to be objectionable may be deemed a waiver of the objection. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Upon receipt of the statement of objections and any other submissions which the Commission may permit, the Commission shall determine whether any of the objections merit further proceedings and may dismiss some or all of the objections if the Commission does not find probable cause to believe either that the alleged conduct occurred or that the alleged conduct materially interfered either with the conduct of the election or with the results of the election. If the Commission determines that probable cause exists to believe that conduct interfering with either the conduct of the election or the results of the election occurred, it shall conduct such further investigation and/or hearing as it shall deem appropriate, or, if no material facts are disputed it may issue a decision on the objections without further fact-finding proceedings.

(4) If no timely objections are filed, and the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, the Commission shall forthwith certify the result of the election.

(5) The record in any hearing conducted pursuant to this section shall include the statement of objections or the statement concerning the eligibility of challenged voters, the responses thereto, and the tally of ballots, in addition to the applicable material specified in 456 CMR 14.09.

14.13: Runoff Elections

(1) The Commission may conduct a runoff election when a valid election results in no choice receiving a majority of the valid ballots cast. No runoff election shall be conducted while objections to the election are pending. If all eligible voters cast valid ballots in an election involving two or more labor organizations and 50% voted for one labor organization while 50% voted for another labor organization, the Commission will conduct a runoff election between the two labor organizations which each received 50% of the votes. If all eligible voters cast ballots in a runoff election involving two or more labor organizations, the Commission may decline to conduct a second runoff election absent evidence that a further runoff election would be likely to produce a different result than the prior election.

(2) Employees who were eligible to vote in the election shall be eligible to vote in a runoff election unless the Commission determines otherwise.

(3) The ballot in a runoff election shall provide for a selection between the choices receiving the largest and second largest number of votes in the prior valid election.

14.14: Re-run Elections

(1) The Commission may declare an election invalid and may order another election providing for a selection from the choices afforded in the previous ballot in the following situations:

(a) The ballot provided for a choice among two or more employee organizations and "neither" or "none" and the votes are equally divided among the several choices; or,

(b) The number of ballots cast for one choice in an election is equal to the number cast for another choice but less than the number cast for the third choice (which did not receive a majority of valid votes cast); or,

(c) A runoff ballot provided for a choice between two employee organizations and the votes are equally divided (but see 456 CMR 14.13(1)).

(d) The Commission concludes that the results of the prior election are invalid due to objectionable conduct of the election or objectionable conduct affecting the results of the election.

(2) Upon the conclusion of either a re-run or a runoff election, the provisions of 456 CMR 14.12 shall govern, insofar as applicable.

14.15: Reinvestigation of Certification

For good cause shown, the Commission may reinvestigate any matter concerning any certification issued by it and, after appropriate hearing, may amend, revise or revoke such certification.

14.16: Revocation of Certification

An employee organization currently certified to represent a bargaining unit may request the Commission to revoke its certification by filing a written request accompanied by a statement that the employee organization disclaims all interest in continued representation of the bargaining unit. A copy of the request shall be served simultaneously on the employer of the bargaining unit.

14.17: Deferral to AFL-CIO "No Raiding" Procedure

In any petition filed under 456 CMR 14.03 by an employee organization affiliated with the AFL-CIO seeking to represent a bargaining unit represented at the time of filing by another employee organization affiliated with the AFL-CIO, any party may request the Commission to defer processing the case for 30 days to permit the employee organizations to use the settlement provisions of the AFL-CIO "no-raiding" procedure. Such a request must be filed with the Commission within ten days following receipt of notice that the petition has been filed, or at least three days prior to the date of the scheduled hearing on the petition, whichever is earlier. Upon written request by any party the Commission may extend the 30-day deferral period. Copies of any request must be served upon all parties to the case.

14.18: Intervention

(1) Any employee organization, including the incumbent exclusive representative, if any, wishing to appear on any ballot or be deemed a necessary party to any agreement for consent election shall file a motion to intervene setting out the same information as required in a petition filed pursuant to 456 CMR 14.03. Except for good cause shown, all motions to intervene filed under 456 CMR 14.18 must be filed within 30 days of the date of the Commission's Notice of Hearing. Any incumbent exclusive representative who does not file a motion to intervene in accordance with 456 CMR 14.18 shall be deemed to have disclaimed interest in representing the employees in the petitioned-for bargaining unit and shall not appear on any ballot or be deemed a necessary party to any agreement for consent election.

(2) Any motion filed under 456 CMR 14.18 must be accompanied by the showing of interest required in 456 CMR 14.05.

(3) Pursuant to 456 CMR 12.02, any party filing a motion to intervene under 456 CMR 14.18 shall serve a copy of its motion on each of the parties named in the original petition and any other intervenors.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.150E, s.3

15.00: PROHIBITED PRACTICES

- 15.01: Charges
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- 15.10: Expeditious Scheduling of Hearing
- 15.11: Interim Bargaining Order
- 15.12: Blocking Charges
- 15.13: Referral to Other Agencies

15.01: Charges

- (1) All charges filed under 456 CMR 15.00 shall be in the form prescribed by the Commission.
- (2) A charge that any employer or employee organization has engaged in or is engaging in any prohibited practice as defined in M.G.L. c. 150E, s.s. 10(a) and (b) may be made by any individual, employer, employee or employee organization.
- (3) A charge made under this chapter shall be in writing and signed by the individual making it and shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true and correct to the best of his or her knowledge and belief.

15.02: Contents of Charge

A charge made under 456 CMR 15.00 shall contain the following:

- (1) The full name and address of the individual, employer, employee or employee organization making the charge and his or her official position, if any.
- (2) The full name and principal place of business of the employer, employee or employee organization against whom the charge is made, hereafter called the respondent.
- (3) An enumeration of the subdivision of M.G.L. c. 150E claimed to have been violated and a clear and concise statement of all relevant facts which cause the charging party to believe that the Law has been violated.

15.03: Six-Month Limitation

Except for good cause shown, no charge shall be entertained by the Commission based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Commission.

15.04: Investigation

(1) When a charge has been filed, an investigation may be conducted by the Commission or its agents. After such investigation, if it appears to the Commission that a hearing is required, it shall cause to be served upon the parties a complaint and a notice of hearing. The Commission may decline to issue a complaint or may withdraw any complaint issued unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.

(2) No complaint shall issue until the charging party has complied with the applicable provisions of M.G.L.c. 150E, s.s. 13 and 14.

(3) If, after a charge has been filed, the Commission declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other ground for its determination. The charging party may obtain a review of such declination to issue a complaint by filing a request therefor with the Executive Secretary within ten days from the date of receipt of notice of such refusal by the Commission. Within seven days of service of the request for review, any other party to the proceeding may file a response with the Commission. The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. Upon its own motion or upon proper cause shown by any of the parties to the proceeding, the Commission may extend the time for the filing of such request for review.

15.05: Amendments

(1) The Commission or a hearing officer upon its own motion or upon the motion of any party may allow amendment of any complaint at any time prior to issuance of a decision and order based thereon, provided that such amendment is within the scope of the original complaint.

(2) Any complaint or amended complaint or any part thereof may be withdrawn by the Commission any time prior to the issuance of an order based thereon and upon such terms as the Commission may deem just and proper.

(3) Any charge or amended charge or any part thereof may be withdrawn by the charging party prior to the issuance of a complaint. After a complaint has been issued the charge or amended charge may be withdrawn only with the permission of the Commission.

15.06: Answers

(1) The respondent shall file an answer to a complaint within ten days from the date of service, unless otherwise notified by the Commission. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that it is without knowledge,

shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(2) Upon its own initiative or upon proper cause shown by the respondent, the Commission may extend the time within which the answer shall be filed.

15.07: Burden of Proof

The charging party shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

15.08: Waiver of Hearing

If the respondent desires to waive hearing on the allegations set forth in the complaint or the amended complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceedings or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from violations of M.G.L. c. 150E alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Either of the first two such answers shall have the same force and effect as if all the allegations of the complaint were admitted to be true and, as in that case, shall be deemed to waive a hearing thereon and to authorize the Commission, without a hearing, without evidence and without findings as to facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the violation of M.G.L. c. 150E charged in the complaint or to take such other action as provided in the Law. If the respondent does not file an answer, the Commission may proceed in a like manner.

15.09: Record

(1) The record in a hearing under this chapter shall consist of the charge, the complaint, notice of hearing, return of service of complaint and notice of hearing, answer, motions, rulings, orders, taped recording or stenographic transcription, stipulations, exhibits, documentary evidence, deposition and amendments to any of the foregoing. Whenever a hearing concerns in whole or in part facts or issues which were or could have been litigated in a related representation proceeding the Commission or hearing officer may incorporate in the record such parts of the record of the representation proceeding as may be appropriate.

(2) The record before the Commission on review of a hearing officer decision in a hearing designated for a hearing officer decision pursuant to 456 CMR 13.02(3) shall be as set forth in 456 CMR 13.15(6).

(3) The record in a hearing designated for a Commission decision in the first instance pursuant to 456 CMR 13.02(2) in which has issued recommended findings of fact and/or recommended conclusions of law shall include the recommended findings and conclusions.

15.10: Expeditious Scheduling of Investigation or Hearing

When temporary relief or a restraining order has been procured by the Commission or any party in connection with any charge or complaint under this chapter, the charge or complaint which has been the basis for such temporary relief or restraining order may be investigated or heard expeditiously. For other good cause shown by any party so requesting in writing, the Commission also may determine that a charge or complaint will be investigated or heard expeditiously.

15.11: Interim Bargaining Order

When it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative in violation of M.G.L. c. 150E, s. 10 and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the Commission shall, upon request, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute. When such interim order is issued, the Commission shall hold a hearing on the complaint in a summary manner and shall speedily determine the issues raised.

15.12: Blocking Charges

(1) During the pendency of a petition filed pursuant to M.G.L. c. 150E, s. 4 any party to the petition may file a motion with the Commission requesting that a pending prohibited practice charge "block" the conduct of an election. Such motion shall be filed in accordance with the provisions of 456 CMR 13.07 and shall include a complete statement of the reasons supporting such motion. In addition a party contending that a pending prohibited practice charge should "block" the conduct of an election must, except for good cause shown, submit with the motion evidence sufficient to establish probable cause to believe that (a) the conduct alleged in the prohibited practice charge has occurred, (b) the alleged conduct violates the Law, and (c) the alleged unlawful conduct may interfere with the conduct of a valid election.

(2) Upon receipt of such a motion the Commission may investigate the matter, issue a notice to the other parties to the election to show cause why the motion should not be granted, or conduct further proceedings to dispose of the matter.

15.13: Referral to Other Agencies

At any time during the pendency of a charge at the Commission the Commission may refer the matter to the Board of Conciliation and Arbitration, or in the case of charges involving police or fire fighters, to the Joint Labor Management Committee, for such period of time as the Commission shall determine in order to promote resolution of the issues in the charge.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

16.00:VARIOUS PROVISIONS OF THE LAW

- 16.01: Filing of Contracts
- 16.02: Requests for Binding Arbitration
- 16.03: Strike Investigations
- 16.04: Petitions and Requests
- 16.05: Compliance with M.G.L. c. 150E, s.s. 13 and 14
- 16.06: Advisory Rulings
- 16.07: Rule-making Hearings
- 16.08: Compliance and Enforcement

16.01: Filing of Contracts

For the purpose of 456 CMR 16.00, any collective bargaining agreement, the term of which does not exceed three years, which has been reduced to writing and executed by the employer or public employer and exclusive representative, shall be deemed to have been filed with the Commission, for the purposes of satisfying the provisions of M.G.L. c. 150E, s. 7, when an exact copy of said agreement has been filed by the employer, the exclusive representative, or any other person.

16.02: Requests for Binding Arbitration

(1) When a party requests the Commission to order binding arbitration, as provided in M.G.L. c. 150E, s. 8, the party so requesting shall provide the Commission the following information in writing:

- (a) The full names and addresses of the employer and the employee organization involved.
- (b) A clear and concise statement of the dispute concerning the interpretation or application of such written agreement. A copy of the grievance for which arbitration is requested must be submitted with the request, along with the date and disposition of the last step of the grievance procedure at which the grievance has been considered.
- (c) A specific reference to the particular part or parts of the written agreement causing the dispute. A copy of the entire written agreement must be submitted with the request.
- (d) Any other relevant facts which may be required in the request for binding arbitration forms issued by the Commission.

(2) Except for good cause shown, no request for binding arbitration shall be entertained by the Commission more than 60 days after exhaustion of the contractual grievance procedure, if any.

(3) All requests for an order of binding arbitration shall be filed in accordance with the requirements of 456 CMR 12.11.

Requests for an order of binding arbitration shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true to the best of his or her knowledge or belief.

(4) The request for an order of binding arbitration shall be served by the party filing it upon all other parties to the collective bargaining agreement at the same time that it is filed with the Commission.

(5) Within 15 days after receipt of a copy of a request for an order of binding arbitration, any other party to the collective bargaining agreement shall provide to the Commission a statement indicating whether the party joins in the request for binding arbitration, opposes the request, or takes no position, and all legal or other arguments in support of its position.

(6) Upon receipt of the submissions of the parties referenced above, the Commission may conduct such further investigation as it deems necessary and may issue an order directing the parties to submit the grievance to binding arbitration, may dismiss the request for an order directing binding arbitration, or may authorize such other disposition of the matter as may effectuate the purposes of M.G.L. c. 150E.

16.03: Strike Investigations

(1) When an employer petitions the Commission to make an investigation of an alleged violation of M.G.L. c. 150E, s. 9A(a), the employer shall include in the petition the following information:

(a) The name, address and telephone number of the employer, and its legal representative, if any.

(b) The names, addresses and telephone numbers, if known, of the employee organization and its officers or the public employees who are alleged to have violated or are about to violate the provisions of M.G.L. c. 150E, s. 9A(a).

(c) The name, address and telephone number of counsel for the employee organization or public employees, if known.

(d) The place of employment of the public employee or employees and the services affected. (e) A statement as to what facts cause the employer to believe that a strike has occurred or is about to occur or has been induced, encouraged or condoned.

(f) Any other relevant facts which may be of assistance to the Commission.

(2) (a) The employer shall serve a copy of the petition on an officer or representative of the employee organization and on all named public employees alleged to have violated or to be about to violate M.G.L. c. 150E, s. 9A(a). The petition served pursuant to this subsection shall contain a statement that the employer requests an investigation by the Commission and that the employee organization or employees may contact the Commission if they wish to present information pertinent to the investigation. The employer shall file an affidavit with the Commission specifying its compliance with 456 CMR 16.03(2).

(b) The Commission may require the employer to serve a notice of the time, date and place of an investigation, if any, to be conducted by the Commission, upon an officer or representative of the employee organization and on each named public employee alleged to have violated or to be about to violate M.G.L. c. 150E, s. 9A(a).

(c) The Commission may investigate the allegations of the employer's petition and may determine whether a strike is occurring or about to occur upon consideration of the employer's allegations and such other evidence as the Commission may consider.

(3) Upon determination that a violation of M.G.L. c. 150E, s. 9A(a) is occurring or is about to occur, the Commission may issue orders setting requirements and may seek enforcement thereof. The Commission may require the employer to serve such orders upon an officer or representative of the employee organization and upon each named public employee found to have violated M.G.L. c. 150E, s. 9A(a).

16.04: Petitions and Requests

All petitions and requests filed under 456 CMR 16.00 shall be in writing and shall contain a declaration by the person signing it, under the pains and penalties of perjury, that its contents are true to the best of his or her knowledge or belief. The original and two copies of the petition or request shall be filed with the Commission.

16.05: Compliance with M.G.L. c. 150E, s.s. 13 & 14

For the purpose of 456 CMR 16.00, compliance with M.G.L. c. 150E, s.s. 13 & 14 means that: (1) Each employee organization has filed the information required by said sections on forms provided by the Commission or the equivalent thereof, or for good cause shown, has received permission from the Commission to extend the time for filing.

(2) That each employee organization filing a petition or a charge, or seeking to intervene in a proceeding pending before the Commission, shall make a declaration under oath or affirmation that it has complied with the requirements of said sections. In the event of failure to comply with 456 CMR 16.05 the Commission may compel such compliance by appropriate order.

16.06: Advisory Rulings

(1) Whenever a party to collective bargaining negotiations challenges the negotiability of a written proposal submitted to it by the opposing party, either party may petition the Commission for an advisory ruling to determine whether the challenged proposal is within the scope of mandatory negotiations as defined in M.G.L. c. 150E, s. 6. The party petitioning for an advisory ruling shall simultaneously serve one copy of the petition upon the respondent or the respondent's attorney or representative. The filing of a petition pursuant to this section shall not affect either party's obligation to bargain under the Law.

(2) When a party petitions for an advisory ruling, it shall file an original and four copies of such petition providing the Commission with the following information:

- (a) The full name and address of the petitioner;
- (b) The full name and address of the petitioner's attorney or representative;
- (c) The name and address of the respondent;

- (d) The name and address of the respondent's attorney or representative;
 - (e) The text of the disputed proposal;
 - (f) A concise statement as to what aspect of the disputed proposal has been challenged and the substance of the challenge;
 - (g) Whether the parties are in negotiations, mediation or fact finding; and,
 - (h) Why an evidentiary hearing is not required.
- (3) The respondent shall within ten days of service of the petition by the petitioner file an original and four copies of a response providing the Commission with the following information:
- (a) Whether the information in the petition required by 456 CMR 16.06(2) is accurate and, if not, the reasons therefor.
 - (b) Whether the respondent considers the issuance of an advisory ruling appropriate and, if not, the reasons therefor.
- (4) The Commission shall determine whether a petition presents an issue appropriate for an advisory ruling. If the petition is granted, the Commission may allow the following:
- (a) the filing of stipulations of facts;
 - (b) the filing of briefs and/or;
 - (c) oral argument.
- (5) The Commission may render, after the filing of briefs or oral argument, if any, its advisory ruling upon the issues involved or otherwise dispose of the petition.
- (6) In any proceeding under M.G.L. c. 150E, s. 11 which is based in whole or in part on the subject matter of proceedings under 456 CMR 16.06, the record made under 456 CMR 16.06 shall be made a part of the Section 11 proceeding.

16.07: Rule-making Hearings

Whenever, pursuant to the provisions of M.G.L. c. 23, s. 9R or M.G.L. c. 30A, a rule-making hearing is held by the Commission, the following procedural rules apply to the extent required by M.G.L. c. 30A.

- (1) The Commission will provide public notice of the proposed rules as required by M.G.L. c. 30A. Persons desiring to be heard with respect to proposed standards, rules or regulations including employers, employee organizations and members of the public are requested to appear at the designated time and place. A record of each such hearing will be kept.
- (2) Interested parties may be required to submit written statements regarding proposed standards, rules or regulations and such questions as they may have in advance of the hearing date and the time for such questions and responses may be limited by the Commission.

(3) Such questions as interested parties may have should be submitted in advance, whether or not the submitting party wishes to appear, since questions to witnesses may only be put by the Commission or its agents. The order of presentation at the hearing will be as follows:

(a) The Commission will present the proposed standards, rules or regulations and an explanation thereof.

(b) Persons requesting the opportunity to speak, and who at the same time submit four copies of a memorandum outlining their respective positions, will each be afforded no more than 15 minutes to make an opening statement, in the order in which such requests are received by the Executive Secretary of the Commission, provided such requests are received five days in advance of the hearing. Each request to speak must contain an estimation of the amount of time required to make a further presentation following opening statements, if desired, and a justification therefor.

(c) Following the opening statements, persons who complied with the provisions of 456 CMR 16.07(3)(b) may be allowed additional time for a further presentation, at the discretion of the Commission, in the order followed for the opening statements.

(d) Other persons who request to speak, prior to or during the course of the hearing, may do so subject to the availability of time and to the Commission's discretion.

(4) The Commission may limit presentation which are redundant, irrelevant or repetitious. Written statements or memoranda may be submitted for consideration by the Commission within seven days after the close of a hearing or such further time as, upon written application, the Commission shall allow.

(5) Except to the extent that such waiver or modification may be inconsistent with the law, any of the procedures described herein relating to the conduct of a hearing may be waived or modified by the Commission to prevent undue hardship or manifest injustice or as the expeditious conduct of business so requires.

(6) A copy of M.G.L. c. 150E and a copy of the proposed standards, rules or regulations shall be made available for inspection at the Boston office of the Commission and appropriate notice of any hearing given, in accordance with the requirement of M.G.L. c. 30A, secs. 3 and 9.

16.08: Compliance with Enforcement of Commission Orders

(1) When a party requests the Commission to seek enforcement of any order issued by the Commission or a member or agent of the Commission, the party so requesting shall provide the Commission the following information, in writing:

(a) The name and address of the party requesting enforcement;

(b) The name and address of the requesting party's attorney or representative, if any;

(c) The name and address of the party alleged to be in non-compliance with an order of the Commission or of a member or agent of the Commission;

- (d) The name and address of the alleged non-complying party's attorney or representative;
 - (e) The Commission case number and text of the specific order or portion thereof which the requesting party claims has not been complied with; and,
 - (f) A statement as to what facts cause the requesting party to believe that there has been non-compliance with the specific order described in 456 CMR 16.08(1)(e). Such statement shall be supported by affidavits made by individuals with personal knowledge, signed under the penalties of perjury.
- (2) The party requesting the Commission to seek enforcement of an order shall serve a copy of its request on the opposing party or its attorney or representative, if any.
- (3) The party alleged to be in non-compliance with an order of the Commission or a member or agent of the Commission shall, within ten days of service of the request for enforcement, or within such other time as the Commission shall establish, file an original and four copies of the response, providing the Commission with the following:
- (a) A stipulation that the information in the request for enforcement is accurate; or,
 - (b) If it is contended that the information is not accurate, an explanation of the nature of any alleged inaccuracy and the reasons therefore. Such reasons shall be supported by affidavits made by individuals with personal knowledge, signed under the penalties of perjury, specifying the steps taken to fully comply with the orders or portions thereof of the Commission or any member or agent.
- (4) In the event of the failure of the party alleged to be in non-compliance to respond to the request for enforcement or in the event of admission of non-compliance or in the event that the information provided in support of compliance is insufficient, the Commission may institute appropriate enforcement proceedings.
- (5) If the Commission determines that:
- (a) the party requesting compliance has failed to provide the information in 456 CMR 16.08(1);
 - (b) the party alleged to be in non-compliance has provided sufficient information to warrant a conclusion that appropriate compliance has occurred; or,
 - (c) that no further action is necessary; the Commission may decline to institute enforcement proceedings.
- (6) If the Commission determines that there is a genuine dispute as to compliance, it may order that a hearing be held to determine whether compliance has occurred. At any hearing concerning the alleged non-compliance, the party required to comply with the Commission's order shall have the burden of proving such compliance by a preponderance of the evidence. The provisions of 456 CMR 13.00 et. seq. shall govern the proceeding insofar as applicable.
- (7) (a) Upon determination that a party is in non-compliance with an order of the Commission or of a member or agent thereof, the Commission may institute appropriate proceedings for enforcement of the order.

(b) If the Commission, after consideration of the evidence and arguments of the parties, judges that the purposes of the Law would not be effectuated by instituting proceedings for enforcement, it may decline to institute proceedings for enforcement and shall so notify the parties.

(8) The party requesting compliance may be required to provide the Commission with assistance, including the furnishing of affidavits, witnesses and documents in preparation for an enforcement proceeding and may be required to bear the expenses associated therewith.

(9) If, following receipt of a final court judgement enforcing a Commission order, the Commission declines to seek execution of the court judgement the Commission's declination shall not preclude the party who desires such execution from seeking it independent of the Commission.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

17.00: AGENCY SERVICE FEE

- 17.01: Scope of Chapter
- 17.02: Definitions
- 17.03: Ratification
- 17.04: Impermissible and Permissible Costs
- 17.05: Demand for Payment of a Service Fee
- 17.06: Challenge of a Service Fee
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- 17.09: Investigation
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17.01: Scope of Chapter

The purpose of 456 CMR 17.00 is to implement the provisions of M.G.L. c. 150E, s. 12. 456 CMR 17.00 shall be applicable only to proceedings arising under M.G.L. c. 150E, s. 12.

17.02: Definitions

Bargaining agent shall mean the employee organization recognized by the employer or certified by the Commission as the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining.

Bargaining unit shall mean that group of employees represented by a bargaining agent which has been recognized by the employer or certified by the Commission pursuant to M.G.L. c. 150E and 456 CMR et seq..

Collective bargaining agreement shall mean a written agreement between a public employer and a bargaining agent which sets forth wages, hours, or other terms and conditions of employment for employees in a bargaining unit.

Escrow account shall mean an account in a bank or comparable financial institution jointly administered by and payable to the charging party and the respondent bargaining agent.

Service fee shall mean a sum of money which an employee is required as a condition of employment to pay to a bargaining agent pursuant to a collective bargaining agreement as provided in M.G.L. c. 150E, s. 12.

Tender shall mean the actual production and unconditional offer to a representative of the bargaining agent of an amount no less than the amount demanded as a service fee.

17.03: Ratification

(1) No service fee shall be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed pursuant to a ratification vote of a majority of all employees casting valid votes in person at a meeting or meetings or by mail in a mail ballot ratification procedure.

(2) The ratification vote shall be taken by mail or at a meeting or meetings called by the bargaining agent. The right to vote by mail or in person at a meeting shall be extended to all employees in the bargaining unit covered by the proposed collective bargaining agreement. Ratification meetings shall be held at a reasonable time and place. Mail ballot ratifications shall be conducted in a manner calculated to ensure custody of the ballots and compliance with the public counting requirement of 456 CMR 17.03(3).

(3) The vote shall be publicly counted, and the majority of valid votes cast by mail or in person at a meeting or meetings shall prevail. If the collective bargaining agreement is ratified, the bargaining agent shall maintain a written record of the results of the vote until the expiration of said agreement.

(4) The bargaining agent shall maintain and make available for inspection by members of the bargaining unit, at reasonable times and places, a copy of its most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements of the previous fiscal year as required by M.G.L. c. 150E, s. 14.

(5) Notice of the ratification procedure shall be given by the bargaining agent in like manner to all employees in the bargaining unit at least five calendar days prior to the holding of the meeting(s) or the distribution of ballots to employees in a mail ratification unless extraordinary circumstances warrant notice of fewer than five days. The notice shall include the following information:

(a) The time and place of the meeting(s) or details of the mail ratification procedure;

(b) A statement that the proposed collective bargaining agreement, if ratified, will require payment of a service fee as a condition of employment;

(c) The current amount of the service fee;

(d) A statement that all employees in the bargaining unit may attend and vote at the meeting(s) or by mail in a mail ratification;

(e) A statement that all employees within the bargaining unit covered by the proposed agreement are eligible to vote;

(f) The full identity, including affiliations, of the bargaining agent; and,

(g) A statement that the bargaining agent's most recent financial report in the form of a balance sheet and operating statements listing all receipts and disbursements of the previous financial year is available for inspection.

17.04: Impermissible and Permissible Costs

(1) Costs attributable to the following shall be deemed impermissible in computing a service fee:

(a) Expenditures for political candidates or political committees formed for a candidate or political party;

(b) Establishing and publicizing of an organizational preference for a candidate for political office;

(c) Lobbying or efforts to enact, defeat, repeal or amend legislation or regulations unrelated to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the bargaining agent or its affiliates;

(d) Expenditures for charitable, religious or ideological causes not germane to a bargaining agent's duties as the exclusive representative;

(e) Benefits and activities which are:

1. not germane to the governance or duties of the bargaining agent, and,

2. available only to the members of the employee organization which is the exclusive bargaining agent;

(f) Fines, penalties or damages arising from the unlawful activities of a bargaining agent or a bargaining agent's officers, agents or members;

(g) Overhead and administrative costs allocable to any activity listed in 456 CMR 17.04(a) through (f).

(2) Costs attributable to the following shall be deemed permissible to the extent that they are not deemed impermissible under 456 CMR 17.04(1).

(a) Preparation, negotiation, and ratification of collective bargaining agreements;

(b) Adjusting employee grievances and complaints;

(c) The public advertising of positions on the negotiating of, or provisions in, collective bargaining agreements, as well as on matters relating to the collective bargaining process and contract administration;

(d) Purchasing of materials and supplies used in matters relating to the collective bargaining process and contract administration;

(e) Paying specialists in labor law, negotiations, economics and other subjects for services used in matters relating to working conditions and to the collective bargaining process and contract administration;

(f) Organizing within the charging party's bargaining unit;

(g) Organizing bargaining units in which charging parties are not employed, including units where there is an existing exclusive bargaining agent;

- (h) Defending the employee organization seeking a service fee against efforts by other unions or organizing committees to gain representation rights in units represented by the employee organization seeking an agency fee or by its affiliates;
- (i) Proceedings involving jurisdictional controversies under the AFL-CIO constitution or analogous provisions governing bargaining agents that are not affiliated with the AFL-CIO;
- (j) Lobbying or efforts to enact, defeat, repeal, or amend legislation or regulations relating to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the bargaining agent or its affiliates;
- (k) Paying costs and fees to labor organizations affiliated with the bargaining agent seeking an agency fee;
- (l) Meetings and conventions;
- (m) Publications of the bargaining agent seeking a service fee;
- (n) Lawful impasse procedures to resolve disputes arising in connection with negotiating and enforcing collective bargaining agreements;
- (o) Professional services rendered to the exclusive bargaining agent and its affiliates;
- (p) Wages and benefits for persons employed by the bargaining agent;
- (q) All other activities not listed in 456 CMR 17.04(1);
- (r) Overhead and administrative costs allocable to any item in 456 CMR 17.04(2)(a) through (q).

17.05: Demand for Payment of a Service Fee

- (1) A bargaining agent seeking payment of a service fee shall serve a written demand for the fee upon the employee from whom the fee is sought. The written demand shall include the amount of the service fee, the period for which the fee is assessed, the method by which payment is to be made, the person to whom payment should be made, and the consequences of a failure to pay the fee.
- (2) A bargaining agent making a written demand pursuant to 456 CMR 17.05(1) shall attach to the demand a copy of the entire text of these Rules relating to agency service fee (456 CMR 17.00).
- (3) No demand for payment of a service fee under this section shall be made until the bargaining agent making the demand has complied with the applicable provisions of M.G.L. c. 150E, s.s. 13 and 14.

17.06: Challenge of a Service Fee

- (1) Employees may challenge the validity or amount of a service fee by filing a prohibited practice charge with the Commission.

Validity shall mean whether there has been compliance with the provisions of 456 CMR 17.03 and 17.05.

Amount shall mean whether some or all of the service fee demanded by a bargaining agent is impermissible under 456 CMR 17.04(1).

(2) Except for good cause shown, a charge challenging the amount of a service fee or its validity under 456 CMR 17.03 or 17.05 shall be filed within six months after the bargaining agent has made a written demand for payment of the fee pursuant to 456 CMR 17.05.

(3) A charge challenging the validity or amount of a service fee shall contain the following:

(a) The full name(s) and address(es) of the individual(s) making the charge.

(b) The full name and address of the bargaining agent against whom the charge is made.

(c) The date the bargaining agent made a written demand for payment of the fee pursuant to 456 CMR 17.05.

(d) The amount of the regular membership dues.

(e) The amount of the service fee assessed by the bargaining agent, and the effective dates of the contract under which the fee was assessed.

(f) If an employee is contesting the validity of the service fee under 456 CMR 17.03 or 17.05, a clear and concise statement of the reasons for the charge, including all relevant facts on which the charge is based.

(g) If an employee is contesting the amount of the fee, a general statement of the reasons for the charge.

(h) The signature of the individual making the charge or his or her representative.

(i) A statement as to whether the charging party has used the bargaining agent's rebate procedure and the result of that procedure.

(j) A declaration by the individual making the charge, under the penalties of perjury, that its contents are true and correct to the best of his or her knowledge and belief.

17.07: Escrow Account

(1) An employee filing a charge contesting the amount of a service fee with the Commission shall jointly establish and administer an escrow account with her/his bargaining agent.

(2) The amount deposited in the escrow account must be equal to the full amount of the service fee for the disputed period of time, or equal to whatever amount remains in dispute after partial settlement between the employee and the bargaining agent seeking the fee.

(3) Except for good cause shown, the charging party shall file with the Commission evidence of the establishment of an escrow account before the date of the Commission's investigation of the charge pursuant to 456 CMR 17.09. Failure to submit such evidence may result in dismissal of the charge.

(4) Failure of the bargaining agent to cooperate in the establishment of the escrow account may waive its right to the establishment of the escrow. If the bargaining agent waives its right to an escrow, the charging party will not be required to pay a service fee until the Commission determines the fee due pursuant to 456 CMR 17.13.

(5) Until a final order is issued by the Commission, the charging party shall continue to pay into the escrow account as such sums become due an amount equal to the service fee, or equal to whatever amount remains in dispute following the Commission's investigation pursuant to 456 CMR 17.09.

17.08: Deferral to Rebate Procedure

At any time after the establishment of an escrow account pursuant to 456 CMR 17.07, the Commission may defer to a bargaining agent's procedure for rebating impermissible expenses to members of the bargaining unit. In order for the Commission to consider deferral, a rebate procedure must meet the following standards:

- (1) Disputed amounts shall be placed in escrow during the pendency of the rebate proceedings;
- (2) The bargaining agent shall establish the justification for the fee demanded;
- (3) The bargaining agent shall make available to the dissenting employee the books and records on which the bargaining agent relies to justify the amount of the service fee demanded;
- (4) The procedure shall provide for a hearing or similar proceeding before a neutral decision-maker in order to determine impermissible and permissible costs used in determining the fee, in accordance with the standards set forth in 456 CMR 17.04;
- (5) At any hearing or similar proceeding, the dissenting employee shall be entitled to a representative of her or his choice;
- (6) The costs arising from the hearing before a neutral decision-maker shall be borne by the bargaining agent; and,
- (7) The procedure shall not be unduly lengthy, cumbersome, or burdensome.

17.09: Investigation

(1) When a charge has been filed under this chapter, the Commission or its designated agent shall conduct an investigation to ascertain whether there is cause to believe that the contested service fee is invalid under 456 CMR 17.03 or 17.05 or that a dispute exists concerning the amount of the fee demanded.

(2) Either at or before the investigation, the bargaining agent shall make available to the charging party the books and records on which the bargaining agent relies to justify the amount of the service fee demanded.

(3) If, upon investigation, the Commission determines that any portion of the service fee is clearly payable to the bargaining agent or the charging party, that portion of the fee shall be

released from the escrow account and promptly remitted to the bargaining agent or the charging party. The Commission's determination shall be based upon the financial data made available by the bargaining agent for its previous contract period. In the case of a newly-certified or recognized bargaining agent whose first contract contains a valid service fee clause, the Commission shall make the determination based on the bargaining agent's actual or estimated costs. The determination shall be valid over the term of the collective bargaining agreement under which the service fee is demanded.

(4) The charging party shall be required to continue paying into the escrow account only that portion of the service fee which the Commission determines remains in dispute. Such payments to the escrow account shall be made as they become due. The portion of the fee determined by the Commission to be owing to the bargaining agent shall be remitted to the bargaining agent as such payments become due.

17.10: Complaint

(1) If, after investigation, there is cause to believe that the contested service fee is invalid under 456 CMR 17.03 or 17.05 or the amount of the service fee remains in dispute, the Commission shall serve a written complaint upon the parties and shall provide for an appropriate hearing. The Commission may decline to issue a complaint unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.

(2) If, after investigation, the Commission declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other ground for its determination. The charging party may obtain a review of the decision not to issue a complaint by filing a request for review with the Executive Secretary within ten days from the date of receipt of notice of such refusal by the Commission. The request shall contain a statement of the reasons upon which the request is based. Upon its own motion or upon proper cause shown by any of the parties to the proceeding, the Commission may extend the time for filing of such a request for review.

17.11: Amendments

(1) Upon its own motion, or upon the motion of any party, the Commission or its hearing officer may allow amendment of any complaint at any time prior to the issuance of a decision and order based thereon, provided that such amendment is within the scope of the original complaint.

(2) Any charge or amended charge filed, or any part thereof, may be withdrawn by the charging party prior to the issuance of a complaint.

(3) Any complaint or amended complaint, or any part thereof, may be withdrawn by the Commission at any time prior to the issuance of an order based thereon and upon such terms as the Commission may deem just and proper.

17.12: Answers

(1) The bargaining agent shall file an answer to a complaint within ten days from the date of service, unless otherwise notified by the Commission. The bargaining agent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless it is without knowledge, in which case it shall so state, such statement operating as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the bargaining agent shall state in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(2) Upon its own initiative or upon proper cause shown by the bargaining agent, the Commission may extend the time within which an answer shall be filed.

17.13: Hearing and Final Determination

Except for good cause, the Commission will schedule a hearing pursuant to 456 CMR 13.00 to make a final determination on the amount of the service fee either after the collective bargaining agreement under which the fee is demanded has expired or at the end of the period of time for which the fee is demanded. At least seven days before the hearing, the bargaining agent upon request shall make available to the charging party the books and records on which the bargaining agent relies to justify the amount of the service fee demanded.

17.14: Record

(1) The record in an expedited or formal hearing under 456 CMR 17.00 shall consist of the charge, the complaint, notice of hearing, return of service of complaint and notice of hearing, answer, motions, rulings, orders, tape recording or stenographic transcription, stipulations, exhibits, documentary evidence and amendments to any of the foregoing.

(2) The record before the Commission on review of a hearing officer's decision shall be as set forth in 456 CMR 13.15(6).

17.15: Burden of Proof

(1) When a complaint issued under 456 CMR 17.00 alleges that a service fee is invalid under 456 CMR 17.03 or 17.05, the burden of proof shall be on the charging party to establish the defects by a preponderance of the evidence.

(2) When a complaint issued under 456 CMR 17.00 alleges that part or all of the amount of a service fee is impermissible under 456 CMR 17.04, the burden of proof shall be on the bargaining agent to establish by a preponderance of the evidence that the contested amounts are permissible.

17.16: Non-payment of Fee

(1) If an employee, after demand by the bargaining agent, refuses to pay the service fee in accordance with the requirements of a collective bargaining agreement, the bargaining agent may request the employee's termination or other sanction. The employer, after reasonable notice to the employee, shall terminate or otherwise sanction the employee pursuant to the collective bargaining agreement; provided, however, that no employee shall be terminated or otherwise sanctioned who has tendered the required service fee prior to the decision to terminate or otherwise sanction; and provided further that payment of a service fee shall not be required before the 30th day following the beginning of the employee's employment or the effective date of the collective bargaining agreement, whichever is later.

(2) No employee who has filed a charge with the Commission and established an escrow account, if required under the provisions of 456 CMR 17.06 and 17.07, shall be terminated or otherwise sanctioned for failure to pay the service fee during the pendency of the charge before the Commission.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.30A, s.3

18.00: DESIGNATION OF COMMISSION AGENTS

18.01: Executive Secretary

18.02: Attorneys

18.03: Other Agents

18.04: Special Designations

18.01: Executive Secretary

The Executive Secretary is hereby designated by the Commission as its agent: to prepare an agenda for all Executive Sessions; to keep the Commission informed as to all matters pending and to furnish the Commission a full list of matters and issues which are to be discussed or voted upon at an Executive Session; to make a permanent record of the disposition of any matter discussed and/or voted upon at an Executive Session; to direct and supervise certain designated employees of the Commission and to assign various duties, under the direction of the Commission, to those employees and inform the Commission of same.

18.02: Attorneys

The Commission may designate any attorney it employs, as its agent:

- (1) to promote any inquiry necessary to the performance of the Commission's functions;
- (2) to conduct any election as directed by the Commission or designated agent thereof;
- (3) to conduct investigations, conferences or hearings as specified in 456 CMR 12.00, 13.00, 14.00, 15.00, 16.00 and 17.00; and,
- (4) to appear for and represent the Commission in any case in court.

18.03: Other Agents

The Commission may designate any person it employs as its agent:

- (1) to prosecute any inquiry necessary to the performance of the Commission's functions;
- (2) to conduct any election as directed by the Commission or designated agent thereof; and,
- (3) to conduct investigations, conferences or hearings as specified in 456 CMR 12.00, 13.00, 14.00, 15.00, 16.00 and 17.00.

18.04: Special Designations

The foregoing designations shall not be construed to limit the power of the Commission to make other special designations as may, in its discretion, be necessary or proper to effectuate the purposes of M.G.L. c. 150E and to appoint any attorneys, hearing officers or

other persons as it may from time to time deem necessary for the proper performance of its duties as designated in the Law.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

19.00: ADVISORY COUNCIL ON EMPLOYMENT RELATIONS (ACER)

- 19.01: Creation
- 19.02: Council Chairman
- 19.03: Function
- 19.04: Removal

19.01: Creation

There is created in the Labor Relations Commission an Advisory Council on Employment Relations appointed by the Commission, consisting of an equal number of representatives of employees, employers and nonpartisan practitioners or academicians. In appointing the representatives of employees, the Commission shall give representation to affiliated and nonaffiliated employee organizations representing employees within the jurisdiction of the Commission. In appointing the representatives of employers, the Commission likewise shall give representation to employers within the jurisdiction of the Commission. The members of the Commission shall be ex officio members of the Council.

19.02: Council Chairman

The chairman of the Council shall be designated from time to time by the Commission and shall have the power to designate such committees and subcommittees as he or she shall deem appropriate.

19.03: Function

The Commission may refer to the Advisory Council on Employment Relations for its study and advice any matter concerning the relations of employers and employees.

19.04: Removal

The Commission may, subject to the approval of the Council, remove any member of the Council prior to the expiration of his or her appointment term.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

20.00: CONSTRUCTION OF RULES, AMENDMENT AND PUBLICATION

- 20.01: Construction
- 20.02: Amendment
- 20.03: Publication
- 20.04: Effective Date

20.01: Construction

456 CMR 20.00 shall be liberally construed to effectuate the purposes and provisions of M.G.L. c. 150E.

20.02: Amendment

456 CMR 20.00 may be amended or rescinded by the Commission from time to time.

20.03: Publication

456 CMR 20.00 shall be published in convenient form.

20.04: Effective Date

456 CMR 20.00 shall become effective on December 7, 1990.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

B. BOARD OF CONCILIATION AND ARBITRATION

457 CMR 2.00: RULES FOR INTEREST MEDIATION, FACT-FINDING AND INTEREST ARBITRATION IN DISPUTES INVOLVING PUBLIC EMPLOYERS AND PUBLIC EMPLOYEES; PRIVATE SECTOR INTEREST MEDIATION

- 2.01: Scope of Rules
- 2.02: Confidentiality
- 2.03: Initiation of Interest Mediation and Fact-Finding
- 2.04: Voluntary Interest Mediation
- 2.05: Appointment of a Mediator
- 2.06: Mediator's Function
- 2.07: Public Access
- 2.08: Mediator's Report
- 2.09: Designation of a Fact-Finder
- 2.10: Withdrawal of Fact-Finder
- 2.11: Fact-Finder's Responsibilities
- 2.12: Mediation during Fact-Finding
- 2.13: Hearing before the Fact-Finder; Subpoenas
- 2.14: Fact-Finding Report
- 2.15: Termination of Fact-Finding
- 2.16: Mediation after Fact-Finding
- 2.17: Compensation of the Fact-Finder
- 2.18: Certification of Completion of the Collective Bargaining Process
- 2.19: Voluntary Interest Arbitration
- 2.20: Private Sector Interest Mediation
- 2.21: Severability

2.01: Scope of Rules

M.G.L. c. 30A and M.G.L. c. 150E, s. 9, provide that the Board of Conciliation and Arbitration (hereinafter the Board) can adopt such rules as may be required to regulate the conduct of mediation and fact-finding proceedings in public employment, including state, county, municipal, and district government.

2.02: Confidentiality

Public policy and the success of the Board's mission require that the Board and its employees maintain a reputation for impartiality and integrity. Pursuant to M.G.L. c. 150, s. 10A, and M.G.L. c. 150E, s. 9, any person acting as a mediator, including a fact-finder or interest arbitrator, will not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

2.03: Initiation of Interest Mediation and Fact-Finding

(1) Petition for Mediation and Fact-Finding. If a public employer and an employee organization have negotiated for a reasonable period of time and an impasse exists over one or more issues arising out of the negotiations, the public employer, the employee organization, or the parties jointly, may file a Petition for Mediation and Fact-Finding with the Board (MBCA FORM F-1). If the petition is being brought unilaterally, then the petitioning party shall cause a copy of the petition to be served on the principal representative of the other party in accordance with the provisions of this subparagraph. The party or parties requesting mediation and fact-finding shall mail the original petition and one copy, signed by the petitioning party or parties, to:

Board of Conciliation and Arbitration
[399 Washington Street, 5th Floor
Boston, MA 02108]
FAX # (617) 727-4961

Upon receipt, the Board will stamp the petition with the date of receipt. If the petition is filed by FAX, the petitioner shall also immediately mail the original, signed petition and a copy of the pertinent collective bargaining agreement to the Board in the manner set forth above.

(2) Unilateral Petitions. A petitioning party proceeding unilaterally must serve the petition on the principal representative of the other party by first-class mail, postage prepaid. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with these Rules. Failure to so state will suspend the processing of the petition.

2.04: Voluntary Interest Mediation

At any time during bargaining, whether or not a Petition for Mediation and Fact-finding has been filed, an employee organization or a public employer may request mediation assistance in resolving a collective bargaining dispute. The Board will provide mediators for this purpose.

2.05: Appointment of a Mediator

(1) Investigation. Upon receipt of the petition, the Board shall commence an investigation to determine if the parties have negotiated for a reasonable period of time and if an impasse exists. The Board will notify the parties of the results of its investigation within 10 days of the filing of the petition if it finds that the parties are not at impasse. Failure to notify the parties within ten days shall be taken to mean that an impasse exists.

(2) Appointment. Within five days of the determination of an impasse, the Board will promptly appoint a mediator to assist the parties in the resolution of the impasse.

(3) Selection. The mediator may be appointed from the staff of the Board unless the parties have stated in the Petition for Mediation and Fact-Finding that they jointly request that the Board appoint an outside mediator. If the parties request an outside mediator they shall specify on the Petition for Mediation and Fact-Finding the name, address, and

telephone number of the person so selected. If the parties jointly request the appointment of a particular staff mediator, due consideration will be given to such request.

(4) Disqualification or Withdrawal of the Mediator. Prior to accepting an appointment, the mediator is required to disclose to the Board any circumstances likely to create a presumption of bias, or which the mediator believes might disqualify him or her as an impartial mediator.

(5) Fees. There will be no cost to the parties for a staff mediator. The cost of an outside mediator, selected by the parties, will be equally divided between the parties unless they agree otherwise.

2.06: Mediator's Function

The function of a mediator is to assist employers and employee organizations in reaching a voluntary agreement. A mediator may hold separate or joint meetings for this purpose. The mediator shall consult with each party concerning the time, date, and place of each mediation session. However, the mediator retains ultimate control over the scheduling of mediation sessions. Pursuant to M.G.L. c. 150E, s. 9, the mediator is empowered to order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for the purpose of resolving the impasse and negotiating such an agreement.

2.07: Public Access

There shall be no public access to mediation sessions.

2.08: Mediator's Report

After a reasonable period of mediation, the staff or outside mediator shall report in writing to the Board the results of his or her efforts to resolve the impasse. This confidential report will contain the following information:

- (1) The names of the parties;
- (2) A statement of the dates of the first contacts with both the employer and the employee organization;
- (3) A brief description of the unresolved issues which existed at the beginning of the mediation effort;
- (4) A statement of the issues that have been resolved through the mediation effort;
- (5) A statement of the issues that are still unresolved, if any; and
- (6) A recommendation as to whether the Chairman of the Board should invoke fact-finding.

2.09: Designation of a Fact-Finder

(1) Appointment by the Board. If the mediator's report (457 CMR 2.08) reveals that an impasse continues to exist, the Board shall send written notice to both parties informing them that mediation has not resolved the impasse and that the Board intends to act upon the petition for mediation and fact-finding by appointing a fact-finder. Promptly thereafter, the Board will appoint a fact-finder from its list of qualified individuals.

(2) Selection by Alternative Means. If the parties jointly agree to select the fact-finder in an alternative manner, they must jointly inform the Board before the Board appoints a fact-finder. The parties must also inform the Board of the name, address, and telephone number of the fact-finder so selected.

(3) Letter of Appointment. After a fact-finder has been selected or appointed, the Board will promptly send a letter of appointment and a copy of the petition to the fact-finder. Copies of the letter will be sent to both parties. The fact-finder is required to promptly notify the Board whether he or she accepts the appointment.

(4) Disqualification or Withdrawal of the Fact-Finder. If the fact-finder has represented an employer or an employee organization within the last 12 months, the appointment will be absolutely revoked by the Board. Moreover, the fact-finder is required to disclose to the Board and the parties any circumstances likely to create a presumption of bias or which the fact-finder believes might disqualify him or her as an impartial fact-finder. Following such a disclosure, the Board will revoke the fact-finder's appointment unless both parties waive this presumptive disqualification. If a fact-finder is disqualified, resigns, dies, or withdraws from his or her duties, the Board will appoint another fact-finder in accordance with 457 CMR 2.09(1).

2.10: Withdrawal of Fact-finding Petition

A fact-finding petition may be withdrawn by the petitioning party in the case of a unilateral filing, or by agreement of both parties in the case of a joint filing, at any time prior to the appointment of a fact-finder. After the appointment of a fact-finder, a fact-finding petition may be withdrawn only by joint agreement of the parties. The parties will compensate the fact-finder for such services as he or she performed in accordance with 457 CMR 2.17.

2.11: Fact-finder's Responsibilities

(1) Authority. The appointed fact-finder will have the authority and responsibility for the conduct of the fact-finding proceedings, and will have sole discretion in deciding any issues of procedure. The fact-finder shall immediately advise the Board if a work stoppage has occurred or is imminent.

(2) Scheduling of Conferences and Hearings. The fact-finder shall consult with each party concerning the time, date, and place of each meeting or hearing. The fact-finder shall make an effort to expedite the process. The fact-finder will be sole judge of scheduling, and his or her ruling as to time, date, place, adjournment, or continuance of any meeting or

hearing will be final and binding. Within a reasonable period of time prior to any hearing, the fact-finder shall serve upon each of the parties and the Board, by first class mail, postage prepaid, a written notice of the time, place, and date of such hearing.

2.12: Mediation during Fact-Finding

- (1) Authority. The fact-finder or mediator has the authority to mediate the dispute.
- (2) Mediation Proceedings. When acting as mediator, the fact-finder may hold separate or joint meetings with the parties. There shall be no public access to mediation sessions.
- (3) Report to the Board. If the dispute is settled through mediation by the fact-finder, the fact-finder shall promptly notify the Board of the date and terms of the settlement.

2.13: Hearing before the Fact Finder; Subpoenas

- (1) Proceeding in the Absence of a Party. Fact-finding may proceed in the absence of a party who, after notice given in accordance with 457 CMR 2.11, fails to appear for a conference or hearing or to obtain a continuance. The fact-finder may choose not to base the report solely upon the presentation of the appearing party. If any party to the dispute fails to appear or to cooperate with the fact-finder, the fact-finder may determine what further evidence is required and may obtain and use any evidence deemed relevant. The fact-finder shall disclose to the appearing party what evidence he or she intends to use and shall give the appearing party an opportunity to respond to such evidence.
- (2) Waiver of Fact-Finding Hearing. The parties may agree to waive the fact-finding hearings. The fact-finder is authorized to issue the report on the basis of whatever documents and stipulations are submitted.
- (3) Representation. Any party may be represented by counsel or other person of its choosing. Such counsel or representative has exclusive authority to present that party's case.
- (4) Third Party Intervention. The fact-finder has authority to decide, in consultation with the parties, whether to permit third party intervenors to file any statements, memoranda, or briefs.
- (5) Order of Proceedings. The fact-finder will:
 - (a) Obtain from the parties a statement of the issues in dispute;
 - (b) Determine the order in which the parties present their cases. In the case of a unilateral petition, the petitioning party will ordinarily present its case first;
 - (c) Afford each party a full and fair opportunity to present all relevant evidence.
- (6) Fact-Finder's Authority to Issue Subpoenas and Administer Oaths. The fact-finder shall have the authority, upon delegation of the Board, to administer oaths, to take the testimony of any person under oath, and to issue subpoenas to compel the attendance of witnesses or the production of documents (MBCA Form CA5). A request for a subpoena will be allowed unless it is overbroad, oppressive, or otherwise legally defective.

(7) Waiver of Objections. Any party to a fact-finding hearing who fails to make a timely objection, as determined by the fact-finder, to an infraction of these rules will be deemed to have waived that objection.

(8) Briefs. Upon the close of the hearings each party has the right to make an oral argument or to file a brief. The time limits on submission of briefs will be established by the fact-finder after consultation with the parties. Should the parties wish to make oral arguments, the order of proceeding will be at the discretion of the fact-finder.

2.14: Fact-Finding Report

(1) Form and Contents. After the close of the hearing and the submission of briefs, if any, the fact-finder will prepare, sign, and date a written fact-finding report. It should include:

- (a) a statement of the issue(s);
- (b) the findings of fact regarding the issue(s);
- (c) a statement of the recommendation for each issue;
- (d) the rationale for the recommendation reached on each issue; and
- (e) a summary cover sheet containing a complete statement as to the fact-finder's recommendations on all issues.

(2) Service of the Report. The fact-finder must send, by certified mail, two copies of the fact-finding report to the Board and one copy to the counsel or representative of each party to the dispute.

(3) Clarification of Report. One or both parties may request that the fact-finder clarify any recommendation in the fact-finding report. This request must be received by the Board within seven days of the date of the report. The party(ies) making this request must also send a copy of the request to the fact-finder. The fact-finder will attempt to dispose of such request within ten days of the Board's receipt of the report. The fact-finder must promptly determine whether the clarification is warranted and then notify the parties and the Board in writing or by conference of the disposition of the request for clarification.

(4) Action on Report. If the parties fail to notify the Board as to the disposition of the fact-finder's report within ten days after the Board's receipt of the report, the Board will assume that no agreement between the parties has been reached on the issues in dispute.

(5) Publication of the Report. If the impasse remains unresolved ten days after the Board's receipt of the fact-finder's report, the Board will make it public.

2.15: Termination of Fact-Finding

Unless the parties agree otherwise, the fact-finder will perform no further service in connection with the dispute once the fact-finding report and clarification, if any, have been served. The fact-finder will keep the Board informed of his or her activities and will notify the Board promptly of any settlement of the dispute and of the terms of the settlement.

2.16: Mediation after Fact-Finding

If the parties are unable to come to agreement after the receipt of the fact-finder's report, a staff mediator may be appointed to assist them in resolving the dispute.

2.17: Compensation of Fact-Finder

The fact-finder will be entitled to the compensation rate contained in his or her resume on file with the Board, for each day or portion thereof spent in hearing, preparation, and issuance of the fact-finder's report, including clarification, if any, and in mediation. The fact-finder will also be entitled to reimbursement for necessary and ordinary expenses. The costs for fact-finding will be equally divided between the parties unless they agree otherwise. The fact-finder's bill showing the amount payable by each of the parties must accompany the final fact-finding report. The fact-finder may submit interim bills to the parties in the course of the proceedings, and copies of such interim bills must also be sent to the Board. The parties shall make payment directly to the fact-finder.

2.18: Certification of Completion of the Collective Bargaining Process

Either or both parties may request the Board to certify to the parties that the collective bargaining process, including mediation, fact-finding, or arbitration, if applicable, has been completed. If the Board determines that the dispute resolution mechanisms provided for in M.G.L. c. 150E, s. 9 have been exhausted, it will certify to the parties that the collective bargaining process has been completed.

2.19: Voluntary Interest Arbitration

Upon joint request of the parties, the Board will administer any written and duly authorized agreement to enter into final and binding interest arbitration of a collective bargaining dispute.

2.20: Private Sector Interest Mediation

Upon request, the Board may appoint a mediator to assist in the resolution of a private sector interest mediation dispute.

2.21: Severability

If any of 457 CMR should be declared invalid by a final order or decree of a court with proper jurisdiction, such invalid provisions or rules will be severed.

REGULATORY AUTHORITY: M.G.L. c. 150, s. 2.

457 CMR 3.00: RULES FOR GRIEVANCE MEDIATION AND ARBITRATION IN THE PUBLIC AND PRIVATE SECTORS

- 3.01: Scope of Rules
- 3.02: Confidentiality
- 3.03: Voluntary Grievance Mediation
- 3.04: Appointment of Mediator
- 3.05: Mediator's Function
- 3.06: Admissibility of Grievance Mediation in Arbitration
- 3.07: Initiation of Grievance Arbitration
- 3.08: Appointment and Qualifications of the Arbitrator
- 3.09: Scheduling of Hearing by the Board
- 3.10: Issuance of Subpoenas
- 3.11: Hearing before the Arbitrator
- 3.12: Arbitration Awards
- 3.13: Clarification, Modification, or Correction of Awards
- 3.14: Publication of Award and Opinion
- 3.15: Request for Arbitration Before an Ad Hoc Arbitrator
- 3.16: Severability

3.01: Scope of Rules

457 CMR 3.00 will govern the procedures for mediation and arbitration of grievances between parties whenever in their collective bargaining agreement(s) or by submission they have provided for mediation and/or arbitration through the Board of Conciliation and Arbitration. 457 CMR 3.00 will apply to the mediation and arbitration of grievances arising in the public sector pursuant to M.G.L. c. 150E s. 8, and in the private sector pursuant to M.G.L. c. 150.

3.02: Confidentiality

Public policy and the success of the Board's mission require that the Chairman and employees of the Board maintain a reputation for impartiality and integrity. Pursuant to M.G.L. c. 150, s. 10A, and M.G.L. c. 150E, s. 9, a mediator, including an arbitrator acting in a mediatory capacity, will not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers, or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

3.03: Voluntary Grievance Mediation

At any time, an employee organization and employer may request mediation assistance for problems arising from the interpretation or application of terms of a collective bargaining agreement. This includes preventive mediation prior to the filing of a grievance and grievance mediation. A party making such a request must file a petition with the Board

(MBCA Form F-2M). The original petition and one copy, signed and dated by the petitioning party(ies), should be sent to:

Board of Conciliation and Arbitration
[399 Washington Street, 5th Floor
Boston, MA 02108]
FAX # (617) 727-4961

3.04: Appointment of Mediator

(1) Appointment. Upon receipt of the Grievance Mediation Petition, the Board will promptly ascertain whether the parties agree to grievance mediation. If the parties agree, the Board will appoint a staff mediator. Alternatively, should the parties request an outside mediator, the Board will assist them by providing a list from its panel of qualified individuals.

(2) Fees. There will be no cost for a Board staff mediator. The cost of an outside mediator, however, will be equally divided between the parties, unless they agree otherwise.

3.05: Mediator's Function

The function of the mediator is to assist the parties in reaching a voluntary settlement of the dispute prior to grievance arbitration. A mediator may hold separate or joint conferences for this purpose. An agreement to mediate, however, will in no way alter a scheduled arbitration date unless both parties agree to postpone the arbitration. At no time shall a grievance mediator act as arbitrator of any case he or she has mediated, nor shall a grievance mediator discuss any aspect of the grievance mediation process with the appointed arbitrator.

3.06: Admissibility of Grievance Mediation in Arbitration

No discussions, offers of compromise, or proposed settlements generated during grievance mediation shall be admissible as evidence in an arbitration proceeding.

3.07: Initiation of Grievance Arbitration

(1) Petition for Arbitration. An employer or an employee organization, or both, may petition the Board to initiate grievance arbitration (MBCA Form F-2A) as provided for in any collective bargaining agreement or other agreement between them. Pursuant to 457 CMR 3.03 through 3.06, at any time prior to the arbitration hearing, the parties may also jointly request the Board to appoint a mediator to aid them in resolving the grievance in advance of the arbitration proceeding. If the petition is being brought unilaterally, then the petitioning party shall cause a copy of the petition to be served by first-class mail, postage prepaid, on the principal representative of the other party in accordance with the provisions of this subparagraph. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with these rules. Failure to so state shall

suspend the processing of the petition. The party or parties requesting grievance arbitration shall mail the original petition, signed and dated by the petitioning party(ies) and a copy of the pertinent collective bargaining agreement to:

Board of Conciliation and Arbitration
[399 Washington Street, 5th Floor
Boston, MA 02108]
FAX # (617) 727-4961

Upon receipt, the Board will stamp the petition with the date of receipt. If the petition is filed by FAX, the petitioner shall also immediately mail the original, signed petition, and a copy of the pertinent collective bargaining agreement, to the Board in the manner set forth above.

(2) Fee for Grievance Arbitration. The fee for arbitration before the Board shall be \$100.00, of which \$50.00 shall be paid by the employee organization and \$50.00 shall be paid by the employer.

3.08: Appointment and Qualifications of the Arbitrator

(1) Appointment of a Single Neutral Arbitrator. The Chairman of the Board may appoint a single neutral arbitrator, who will hear and determine the case promptly.

(2) Appointment of a Tripartite Board. The Chairman of the Board may appoint a tripartite board to hear and determine grievance arbitration cases on a case-by-case basis. The Chairman shall be the neutral member of this board. One of the other members shall be a representative of labor and one a representative of employers of labor. Prior to appointing these representatives, the Chairman will consult with the employee organization and employer involved in the case to determine whether they want a representative to sit on the case and, if so, what representative they recommend.

(3) Disqualification or Withdrawal of the Arbitrator. Prior to accepting an appointment, the neutral arbitrator is required to disclose to the Board any circumstances likely to create a presumption of bias, or which the arbitrator believes might disqualify him or her as an impartial arbitrator. If the arbitrator is disqualified or withdraws, the Board will appoint another arbitrator in accordance with the provisions of 457 CMR 3.08(1) and (2).

3.09: Scheduling of Hearing by the Board

(1) Scheduling. Upon receipt of the petition, the Board will serve upon each of the parties a written notice of the date and time of the hearing to be held at the offices of the Board in either Boston or Springfield. The notice will be given reasonably in advance of the hearing. The Board will make every effort to hold the hearing promptly after it receives the petition.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Board will generally accept such requests. If one party requests a continuance of the hearing, the Board may for good cause shown and, where possible, after consultation with the other party, continue the hearing to another time and date, set at

the discretion of the Chairman. Notice of a new hearing date and time will be given in accordance with the provisions of 457 CMR 3.09(1).

3.10: Issuance of Subpoenas

Any party may request the Board to issue a subpoena to compel the attendance of witnesses or the production of documents. (MBCA Form CA5) A request for a subpoena will be allowed unless it is overbroad, oppressive, or otherwise legally defective. The party requesting the subpoena shall be responsible for service of the subpoena.

3.11: Hearing Before the Arbitrator

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of a party who, after notice given in accordance with 457 CMR 2.09, fails to appear or to obtain a continuance. The Board shall investigate the circumstances surrounding a party's failure to be present, and, under extraordinary circumstances, may reopen the record, subject to rebuttal by the appearing party.

(2) Representation. A party may be represented by counsel or other person of its choosing. Such counsel or representative has the exclusive authority to present that party's case.

(3) Last Chance Grievance Mediation. Directly preceding the scheduled arbitration hearing and upon agreement of the parties, a mediator may assist the parties in a final attempt to settle the grievance. The conduct of such mediation shall be governed by 457 CMR 3.03 through 3.06.

(4) Conduct of Proceedings. The arbitrator shall have the authority and responsibility for the conduct of the arbitration proceedings and will have sole discretion in deciding any issues of procedure. The arbitrator will:

- (a) Attempt to obtain from the parties a joint statement of the issue(s) in dispute;
- (b) Determine the order of presentation;
- (c) Record the date, time, and place of each hearing, and the names of the counsel or representatives and of all others present;
- (d) Administer oaths or affirmations;
- (e) Afford each party a full and fair opportunity to present relevant evidence and argument;
- (f) Require the parties to submit additional evidence that the arbitrator deems necessary to an understanding and determination of the dispute; and,
- (g) Rule on the admissibility of evidence.

(5) Transcript or Recording of Proceedings. A party wishing a stenographic record of the proceedings shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record. The other party may purchase a copy from the

stenographer. Such transcript shall be the official record of the proceedings, and a copy shall be provided to the arbitrator free of charge. The arbitrator's copy of the transcript will be made available to the parties for inspection at a time and place determined by the arbitrator. The arbitrator, but not the parties, may make an unofficial recording of the proceedings strictly for his or her own use.

(6) Waiver of Objections. Any party to an arbitration hearing who fails to make a timely objection, as determined by the arbitrator, to an infraction of these rules will be deemed to have waived that objection.

(7) Closing of Hearings. When the arbitrator determines that all of the evidence has been offered, he or she shall declare the hearing closed. The arbitrator may reopen the record for good cause shown. Parties have the right to make oral arguments or to submit written briefs. The time limits on submission of briefs will be established by the arbitrator after consultation with the parties. Should the parties wish to make oral argument, the arbitrator will determine the order of proceeding.

(8) Submission of Briefs. Any briefs submitted in arbitration proceedings before the Board should be submitted to the Board in duplicate, together with a pre-addressed and postage paid envelope addressed to the representative or counsel of the opposing party. The Board will convey all briefs.

3.12: Arbitration Awards

The arbitrator shall issue an award within a reasonable period of time after the hearing has been closed and any briefs have been filed. The Board will simultaneously send by first class mail, postage prepaid, a copy of the award and any accompanying opinion to the counsel or representative of each party.

3.13: Clarification, Modification, or Correction of the Award

(1) Standards.

(a) Clarification. The arbitrator may clarify the award if it is so indefinite or incomplete that it cannot be performed.

(b) Modification or Correction. The arbitrator may modify or correct the award if there is: an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in an award; or if the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) Procedure.

(a) Joint Request. A joint request for clarification, modification, or correction of an award must be submitted to the Board within a reasonable time after the requesting parties have received the award. The Board will promptly determine whether to grant the request. The Board may call a conference with the parties to consider the request. The Board will then promptly notify the parties in writing of the disposition of the request.

(b) Unilateral Request. A unilateral request for clarification, modification, or correction of an award must be submitted to the Board within a reasonable time after the requesting party has received the award. Such a request must be served forthwith upon the opposing party's counsel or representative. The Board will give the opposing party an opportunity to respond or raise objections to the request. Any such response or objection must be received by the Board within a reasonable time after the opposing party has received a copy of the request. The Board shall then determine whether to proceed as set forth in 457 CMR 3.13(1).

3.14: Publication of Award and Opinion

The award and opinion of the arbitrator will be treated as a public record and after issuance will be open to public inspection. The Board may have its awards and opinions published unless either party to the proceeding gives written notice to the Board within 30 days of the award that it does not wish to have such award and opinion published.

3.15: Request for Arbitration Before an Ad Hoc Arbitrator

The Board will designate an outside arbitrator if so specified in the collective bargaining agreement. If no procedure is specified, the Board will appoint an arbitrator from its list of qualified individuals. The arbitrator so designated should conduct the arbitration proceedings and render an award in accordance with these rules. The compensation of an outside arbitrator will be in accordance with the requirements of 457 CMR 2.17.

3.16: Severability

If any of 457 CMR 3.00 should be declared invalid by any final order or decree of a court with proper jurisdiction, such invalid provision or rule will be severed.

REGULATORY AUTHORITY: M.G.L. c. 150, s. 2.

457 CMR 4.00: CONDUCT OF GRIEVANCE ARBITRATION PROCEEDINGS

- 4.01: Scope of Rules and Effective Date
- 4.02: Petition to Initiate Grievance Arbitration Before the Board
- 4.03: Scheduling of Hearing by the Board; Continuances
- 4.04: Withdrawal of Petition
- 4.05: Hearing Before the Board
- 4.06: Arbitration Awards by the Board
- 4.07: Request for Arbitration Before Ad Hoc Arbitrator
- 4.08: Gender; Days
- 4.09: Severability
- (4.10 through 4.89: Reserved)
- 4.90: Appendix

4.01: Scope of Rules and Effective Date

457 CMR 4.00 shall govern the procedure for the arbitration of grievances which arise during the life of a collective bargaining agreement wherein the parties have agreed upon the Board of Conciliation and Arbitration (hereinafter the Board) as the arbitration tribunal. This chapter shall apply to the arbitration of grievances arising in either the private sector pursuant to M.G.L. c. 150 or the public sector pursuant to M.G.L. c. 150E s. 8. 457 CMR 4.00 shall become effective as of June 26, 1978 and shall revoke as of said date all grievance arbitration rules previously adopted by this Board.

4.02: Petition to Initiate Grievance Arbitration Before the Board

(1) Who May File; When to File; Form; Where to File and Number of Copies; Service on Other Party.

(a) Who. A petition to initiate grievance arbitration may be filed by an employer or by a labor organization or by both as the collective bargaining agreement or other agreement between the parties shall provide. In the absence of a controlling provision in the collective bargaining agreement, either party may bring such a petition.

(b) When. Such a petition shall be filed in accordance with the time requirements of the collective bargaining agreement between the parties. In the absence of such provision in a collective bargaining agreement, such petition shall be filed within a reasonable period of time.

(c) Form. The petition shall be prepared on a form furnished by the Board which appears as 457 CMR 4.90 Appendix.

(d) Where; Copies. The original, signed by the petitioner(s) and one copy of said petition, shall be filed with the Board at its offices [at 399 Washington Street, 5th Floor, Boston, MA 02108.]

(e) Service. If the petition is being brought unilaterally, then the petitioning party shall cause a copy of said petition to be served on the principal representative of the other party

by registered or certified mail. The petitioning party, if proceeding unilaterally, shall state in the appropriate place on the petition that it caused a copy of the petition to be served on the principal representative of the other party in accordance with the provisions of 457 CMR 4.02(1)(e). Failure to so state shall suspend the processing of the petition. Upon receipt, the Board shall stamp the petition with the appropriate date.

(2) Contents. The petition shall include the following:

(a) The name, address and affiliation of the labor organization involved and the name, address, and telephone number of its principal representative.

(b) The name and address of the employer involved and the name, address and telephone number of its principal representative.

(c) The nature of the employer's business.

(d) If the petition is being brought jointly and if the parties have agreed upon the issue(s), there shall be a brief statement as to the nature of the dispute and a statement as to the issues(s) jointly submitted; otherwise, the moving party shall give a brief statement as to the nature of the dispute and the remedy sought.

(e) If the petition is being brought unilaterally, a statement that a copy of the petition is being served in accordance with the procedures contained in 457 CMR 4.02(1)(e).

(f) The party(ies) bringing such petition shall sign and date such petition and shall file with the petition a copy of the pertinent collective bargaining agreement.

4.03: Scheduling of Hearing by the Board; Continuances

(1) Scheduling. Upon receipt of the petition, the Board shall serve upon each of the parties a written notice of hearing to be held at the offices of the Board at a time and date fixed therein. Such notice shall be given reasonably in advance of such hearing. In cases where the petition has been brought unilaterally, the Board may give notice of hearing by certified mail, return receipt requested.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Board shall continue the hearing to such time and date. If one party requests a continuance of the hearing, the Board may for good cause shown and after consultation with the other party, where possible, continue the hearing to another time and date. Notice of a new hearing date and time shall be given in accordance with the provisions of 457 CMR 4.03(1). Every effort shall be made by the Board to hold such hearing seasonably after receipt of the petition.

4.04: Withdrawal of Petition

A petition to initiate grievance arbitration may be withdrawn at any time prior to the holding of the arbitration hearing by the petitioning party in the case of a unilateral filing or by agreement of both parties in the case of a joint filing. Upon or after the holding of the arbitration hearing, the petition may be withdrawn only by joint agreement of the parties.

4.05: Hearing Before the Board

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of any party who, after notice given in accordance with 457 CMR 4.03, fails to be present or fails to obtain an adjournment. The Board may choose not to base its award solely upon the presentation of one party; rather, it may afford the defaulting party 14 days from the date of the hearing to submit evidence and argument in writing to the Board with a copy to the other party. If the defaulting party makes no such offer of proof within the time aforesaid, the Board shall decide the case on the evidence and argument before it. If the defaulting party chooses to make such offer of proof, the Board shall afford the other party an appropriate opportunity to make a seasonable response.

(2) Counsel or Representative of the Parties. At or before the first hearing conducted by the Board, each party to the dispute shall furnish the Board with a written appearance identifying that party's counsel or representative. Such person or his designee shall have the exclusive authority to present that party's case to the Board, and the Board shall deal with such person as the exclusive spokesman and representative for that party throughout the arbitration proceeding or until it receives notice that some other person shall serve as counsel or representative for a party.

(3) Order of Proceedings. The Board shall open the hearing with a reading of the pertinent portions of the petition to initiate grievance arbitration. The petitioning party will ordinarily present its case first, but the Board may vary this procedure. In the case of a petition brought jointly, the Board shall determine the order of proceeding.

(4) Record of Proceedings. If one or both parties desire that a stenographic record of the proceedings be made, that party or both parties, as the case may be, shall contact the Board seven days in advance of the hearing to ask that the Board provide such a service. If the Board provides such a service, transcripts will be provided upon request at an appropriate cost to the requesting party(ies). The Board may on its own motion make a stenographic record of the proceedings.

(5) Evidence. Each party shall be afforded full and equal opportunity for the presentation of relevant proofs. The parties may offer such evidence as they desire and shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute. The Board shall rule on the admissibility of the evidence offered. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the counsel or representative of both parties except where one of the parties is in default or has waived its right to be present.

(6) Waiver of Objections. Any party to an arbitration hearing who fails to make a timely objection, as determined by the Board, to infraction of these rules shall be deemed to have waived such objection.

(7) Closing of Hearings. The Board shall inquire of both parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, it shall declare the hearings closed, and it shall record the date and time thereof. Upon the close of the hearings each party shall have the right to make an oral argument and/or file a brief

with the Board. The time limits on submission of briefs shall be established by the Board after consultation with the parties. Should the parties wish to make oral argument, the Board shall determine the order of proceeding.

4.06: Arbitration Awards by the Board

(1) Arbitration Award. After the close of the hearing and the submission of briefs, if any, the Board shall render an award on a form prepared by it. The award shall be decided by majority vote of the Board members; any dissent shall be noted on the award.

(2) Time of Award. The Board shall make every effort to render the award within 30 days of the close of the hearings.

(3) Opinion. The Board shall make every effort to render an opinion to accompany the award. The opinion shall provide a statement of the rationale by which the result was reached. Dissenting opinions may also be given.

(4) Service of Award. The Board shall simultaneously send by mail a copy of its award and accompanying opinion to the principal representative of each party as such name appears on the petition to initiate grievance arbitration or on the appearance form at the time of hearing.

(5) Clarification of Award.

(a) Request for Clarification. Each party or both parties may request the Board to clarify any aspect of its award provided such request is made within a reasonable time of the date of the Board's award.

(b) Procedure in Cases of Joint Request. In cases where the Board receives a joint request from the parties to clarify its award, it shall promptly determine whether any clarification is warranted and shall determine the nature of the clarification, if any, and shall notify the parties in writing of the disposition of the request for clarification. If the circumstances so warrant, the Board may call a conference with the parties to consider the matter of clarification.

(c) Procedure in Cases of Unilateral Request. In cases where the Board receives a unilateral request from a party to clarify its award, it shall have the discretion to decide whether to proceed with such request. If it decides to proceed, it shall promptly determine whether the other party has any objection to the request, and if the circumstances so warrant, it may call a conference with the parties to consider the matter of objections and clarification thereafter, the Board shall decide upon the question of clarification and shall promptly notify the parties in writing of the disposition of these issues.

(6) Publication of Award and Opinion. The awards and opinions of the Board shall be treated as public records and after issuance shall be open to public inspection by any person. The Board may have its awards and opinions published by any of the publishing services unless either party to the proceeding gives written notice to the Board within 10 days from the date of the award that it does not wish to have such award and opinion published.

4.07: Request for Arbitration Before Ad Hoc Arbitrator

In the case of those collective bargaining agreements where the Board is named as the tribunal administering grievance arbitration before ad hoc arbitrators, the Board shall follow the procedure specified in the collective bargaining agreement in the designation of an outside arbitrator. If no procedure is specified in such agreement, the Board shall appoint an arbitrator from the list of qualified persons that it maintains. The arbitrator so designated shall observe in the conduct of the arbitration proceedings and in the rendering of his award the procedures applicable to the Board's handling of such matters as previously spelled out in these rules. The compensation of an outside arbitrator shall be in accordance with the requirements set forth in 457 CMR 2.15 of the Board's Fact Finding Rules.

4.08: Gender; Days

(1) Gender. The masculine gender shall be deemed to denote the feminine or neutral gender, the singular to denote the plural and vice-versa where the context so permits.

(2) Days. References to days shall mean calendar days, and time calculations shall commence with the day following notice.

4.09: Severability

The provisions of these rules are severable, and if any of the rules contained herein should be declared invalid by an order or decree of a court with proper jurisdiction and if said order or decree has become final, such invalid provision or rule shall be severed herefrom.

(4.10 through 4.89: Reserved)

4.90: Appendix

SEE TEXT

REGULATORY AUTHORITY: M. G. L. c. 150E, s. 8

C. JOINT LABOR-MANAGEMENT COMMITTEE

JOINT LABOR-MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE AND FIRE Adopted August 24, 2000²

The purpose of the Joint Labor-Management Committee is to encourage the parties to collective disputes involving municipal police officers and fire fighters to agree on the terms of collective bargaining agreements or the procedures to resolve particular disputes. The Committee shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement and a constructive long-term relationship.

I. The Operations of the Committee

1. Each part of the Committee, professional police officers, professional fire fighters and representatives of the cities and towns shall designate a chairman of its group within the Committee to facilitate consultation and communications. Each part of the Committee shall establish procedures by which it shall designate a chairman and the term of office.
2. In matters exclusively pertaining to municipal fire fighters, committee members nominated for appointments by professional police officer organizations shall not vote, and in matters exclusively pertaining to municipal police officers, committee members nominated for appointment by professional fire fighter organizations shall not vote.
3. All Committee members shall be eligible to vote on matters of common and general interest.
4. The number of votes of Committee members representing the local government advisory committee and the number of votes of Committee members representing the professional fire fighter or police organizations entitled to vote on any matter coming before the Committee shall be equal.
5. The Chairman may cast the deciding vote on any matter relating to a dispute concerning negotiations over the terms and provisions of a collective bargaining agreement, including any decision to exercise jurisdiction over a dispute. The Chairman shall be the chief administrative officer of the Committee. The Vice Chairman shall assist the Chairman and may be authorized by the Chairman to act for him in his absence and shall have the full powers of the Chairman when so authorized and he shall vote only in the absence of the Chairman.

² The Rules of the Joint Labor-Management Committee are not contained in the Code of Massachusetts Regulations. Rather, the Committee promulgates its rules pursuant Chapter 1078 of the Acts of 1973, §4A(4), as most recently amended by Chapter 589 of the Acts of 1987, §1. The Joint labor-Management Committee adopted its Rules on July 2, 1979 and adopted amended Rules on May 6, 1988, January 6, 1994, and August 24, 2000.

6. The Committee shall comply with the Open Meeting Law of the Commonwealth as amended. That statute, Chapter 30, Section 11A ½ (3), provides that executive sessions may be held "to discuss strategy with respect to collective bargaining and to conduct collective bargaining sessions," including related mediation and such sessions may be closed by the Committee.
7. A quorum shall consist of one member of the Committee representing the local government advisory committee and one member of the Committee representing the professional fire fighter organizations and one member of the Committee representing the professional police officers organizations and the Chairman or Vice Chairman.
8. The Committee expects that its members shall regularly attend meetings of the Committee. However, professional police organizations, professional fire organizations and the local government advisory committee shall specify alternate members to represent their respective members, subject to the approval of the full Committee, for a term of one year (subject to re-appointment) to assure that the work of the Committee may go forward. Alternate members are expected regularly to attend meetings of the Committee.
9. The Committee shall appoint one full-time senior staff person nominated by the members of the Committee representing the local government advisory committee and one full-time senior staff person nominated by the members of the Committee representing the professional police officer and professional 'fire fighter organizations. The two senior staff persons work together to further the purposes of the Committee. They may be assigned by the Committee through the Chairman to gather facts, to facilitate negotiations, to mediate, and otherwise to encourage agreement between parties.
10. The Committee may specify other staff positions in accordance with law and within the budget. The Chairman shall supervise such staff. The Committee may also appoint special mediators, fact finders and neutrals to facilitate the resolution of particular cases.

II. The Involvement of the Committee in Disputes

1. The Committee shall have oversight responsibility for all collective bargaining negotiations involving municipal police officers and fire fighters.
2. The Committee shall request the Executive Office of Labor, the Board of Conciliation and Arbitration and the Labor Relations Commission each to designate a person with whom the Committee shall maintain a flow of information and through whom the Committee shall consult these Agencies on particular cases to assure co-operative relations and consistent activities in the interest of improved collective bargaining and dispute resolution.
3. Should either party or the parties acting jointly to a municipal police and fire collective bargaining negotiations believe a dispute is unresolved and warrants mediation, the party or both parties shall petition the Committee for the exercise of jurisdiction. Such petition shall identify the issues in dispute, the parties and the efforts of the parties to resolve the dispute.
 - (a) The Committee shall forthwith review the petition and shall make a determination within thirty (30) days of the receipt of the petition whether to exercise jurisdiction over the

dispute. If the Committee declines to exercise jurisdiction over the dispute or fails to act within thirty (30) days of receipt of the petition of jurisdiction, the petition shall automatically be referred to the Board of Conciliation and Arbitration for disposition in accordance with its procedures.

(b) The Committee may subsequently at any stage after consultation with the Board of Conciliation and Arbitration remove the dispute from the jurisdiction of the Board and handle the case as if it had retained jurisdiction at the outset. The Committee may, at any time, remand to the Board any dispute in which the Committee has exercised jurisdiction. The Committee's decisions on jurisdiction are to be formally communicated to the Board of Conciliation and Arbitration and to the parties.

4. After a petition has been filed with the Committee, the parties to any municipal police and fire fighter negotiations shall furnish the assigned field investigator the following information:

(a) Copies of requests to bargain and proposals of each side.

(b) Notification of all pending unfair labor practice proceedings between the parties.

(c) Collective bargaining agreements and relevant personnel ordinances, bylaws, and rules and regulations including wage and salary and benefit schedules.

(d) Such other information as the field investigator may reasonably require for the Committee.

5. The Committee may, at its discretion, and on its own initiative exercise jurisdiction in any dispute over the negotiations of the terms of a collective bargaining agreement involving municipal fire fighters or police officers. The Committee may also exercise jurisdiction in any dispute concerning job titles over which the parties have negotiated or in any dispute over proposals to remove specific job titles from collective bargaining for individuals and performing certain specified management duties.

6. The Committee or its representatives, field investigators or staff mediators are authorized to meet with the parties to a dispute, conduct formal or informal conferences, to set dates for such meetings, and take other steps including mediation to encourage the parties to agree on the terms of a collective bargaining agreement or the procedures to resolve the disputes. The Committee shall make every effort to encourage the parties to engage in good faith bargaining to reach settlement through negotiations or mediation.

7. In certain disputes that persist, the Committee may order fact-finding and appoint a fact-finder outside the Committee to report the facts, mediate the dispute and make recommendations for resolution of the disputed issues. The Committee may on occasion designate its members, including the Chairman or Vice Chairman, to perform such functions. The Committee shall determine the procedures for the distribution and any release of the report.

8. In dispute resolution conducted by other than the Committee or its members or staff, the parties shall share and pay equally the costs involved in such resolution, provided, however, that pursuant to a vote of the Committee and subject to the availability of funds for the purpose thereof, said costs may be paid by the Committee.

9. The Committee shall have the power to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative to or pertinent to the issues in the dispute.

10. In any dispute before the Committee in which it concludes that a study of the financial ability of the municipality to meet costs may facilitate the resolution of the dispute, it may request the Commissioner of Revenue to make a study specifying various factors to be taken into consideration.

11. When the parties to a municipal police or fire collective bargaining negotiation jointly design their own dispute resolution procedures, they may divest the Committee of jurisdiction by presenting a written agreement of their procedures to the Committee; provided, however, that the Committee finds that said procedures provide for a final resolution of the dispute, without resort to strike, job action, or lockout; and provided, further, that if the Committee subsequently finds that either of the parties fails to abide by said procedures, the Committee shall assume jurisdiction of the dispute.

III. Procedures in Disputes that have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. (Section 3 (a) of Chapter 589 of the Acts of 1987)

1. In a dispute, over which the Committee has taken jurisdiction, and which the Committee determines issues in dispute have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining, the Committee may direct an investigation hearing to be held by a tripartite panel of the Committee, or by the Chairman or Vice Chairman of the Committee, or by the senior staff for labor and the senior staff for management together (who may also substitute for a labor or management member of a tripartite panel) to identify:

- a) the issues remaining in dispute;
- b) the current position of the parties;
- c) the views of the parties as to how the continuing dispute should be resolved;
- d) the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties;
- e) other relevant questions

Such hearing officers shall report to the Committee the information gathered at the hearing.

2. If the Committee thereafter finds there is an apparent exhaustion of the processes of collective bargaining which constitutes a potential threat to public welfare, it shall so notify the parties of its findings. Within ten (10) days of such notification, the Committee shall also notify the parties of its intent to invoke such procedures and mechanisms as it deems appropriate, and it has been authorized by legislation to use, for the resolution of the collective bargaining negotiations.

3. In any dispute involving the financial ability of the municipality to meet costs, the assistance of a report of the Commissioner of Revenue is to be requested, if a current

report had not been secured earlier in dispute resolution efforts of the Committee. (See II-10 above.)

4. Any decision or determination resulting from the above procedures determined by the Committee, if supported by material and substantive evidence on the whole record shall be, subject to the approval by the legislative body or a funding request as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party or the Committee in superior court in equity.

5. The statute requires that the municipal employer “shall submit to the appropriate legislative body within thirty days after the date on which the [arbitration] decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of such request. Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made to the earlier of (i) the next occurring annual town meeting, or (ii) the next occurring special town meeting.”

In the event that the municipal legislative body votes not to approve the request for appropriation, the Committee retains full jurisdiction of the dispute. The Committee may take such further action as it deems appropriate to resolve the dispute including further mediation, fact-finding or dispute resolution procedures.

6. In the event a JLMC panel at a 3(a) hearing considers that the number of issues reported as open are too numerous for an effective dispute resolution or arbitration proceeding, and it has been unable to secure a voluntary agreement to limit the number or scope of issues, it may recommend to the full Committee the issues each party may present in the arbitration or other dispute resolution proceeding. In such case the Committee may limit and specify the issues for arbitration or may limit by specifying to each party the number and scope of issues to be presented to arbitration, defining issues narrowly and precisely.

The parties shall be informed that all other outstanding issues are deferred and shall not be a part of the agreement in dispute. The appointed or selected arbitrator or arbitration panel shall issue an award on the limited number of issues, and the award shall determine the changes to be incorporated in the collective bargaining agreement of the full term under negotiations. Nothing in this paragraph is intended to preclude the parties from incorporating in a collective bargaining agreement mutually agreed upon provisions.

7. A JLMC panel at a 3(a) hearing is further authorized to recommend to the Committee procedures to expedite the arbitration or fact-finding process by specifying or not pre-hearing briefs and the date and the number of days of hearing. The question of post-hearing briefs is ordinarily to be left to the discretion of the arbitrator or arbitration panel. The arbitration award or fact-finding report is due in the JLMC office thirty days from the conclusion of the hearing or due date of post-hearing briefs. The JLMC may specify these elements of the arbitration or fact-finding process in its order to the parties.

8. In view of the structure and composition of the JLMC established by legislation (Chapter 589 of the Acts of 1987), in any continuing proceeding of the Committee such as a subcommittee, a Section 3(a) hearing, an authorized tripartite fact-finding or tripartite arbitration panel to resolve a particular dispute, each of the constituent parts of the Committee—professional fire fighters, police or municipal management—shall be free to substitute one member or alternate in the course of the proceeding with the expressed approval of the chairman of that group. In the event of an emergency involving the attendance of a labor or management member of such committee or panel, the senior staff for labor or management may serve at the designation of the chairman of the group. This freedom of substitution to accommodate work schedules shall not apply to neutral chairpersons of such panels.